In The

Supreme Court of the United States

October Term, 1965

No. 673

MARCHA CARDONA,

Appellant,

vs.

JAMES M. POWER, THOMAS MALLEE, MORRIS J. O'BRIEN and JOHN R. CRIMS, Members of and constituting the Board of Elections of the City of New York,

and

LOUIS J. LEFKOWITZ, as Attorney General, appearing specially pursuant to Section 71 of the Executive Law,

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BRIEF OF AMERICAN JEWISH CONGRESS,
AMICUS CURIAE

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The American Jewish Congress has sought and received consent of the parties to submit this brief amicus curiae.

STATEMENT

Appellant, Martha Cardona, is a native-born citizen of the United States who is literate in Spanish, the native language of her place of birth, Puerto Rico (R. 2). She voted regularly in gubernatorial, legislative and municipal elections in Puerto Rico prior to coming to New York City in 1948 (R. 3). The facts set forth in her petition indicate that she had access to sufficient sources of information and has utilized such sources to become an informed and knowledgeable citizen (R. 3). Nonetheless, she and large numbers of her fellow citizens similarly situated, although they are literate in the language which they learned in their United States schools, are denied the right to vote in New York State pursuant to Article II, Section 1 of the New York State Constitution and Sections 150, 168 and 201(1) of the New York State Election Law. The constitutional provision reads, in part, as follows: " * * * after January first, one thousand nine

hundred twenty-two, no person shall become entitled to vote * * * unless such person is also able, except for physical disability, to read and write English."

Appellant's application for an order directing that the members of the Board of Elections of the City of New York register her as a duly qualified voter, or, in the alternative, directing the Board to give appellant a literacy test in the Spanish language (R. 1) was denied by the Supreme Court of New York County (R. 37-38). The New York Court of Appeals, voting four to three, affirmed (R. 40-41).

QUESTIONS TO WHICH THIS BRIEF IS ADDRESSED

This brief amicus considers only the following questions:

1. Is the denial of the right to vote to native American citizens who, although literate in Spanish, are unable to meet the English literacy requirement of New York State a violation of either the Privileges and Immunities or Due Process Clauses of the Fourteenth Amendment?

2. Is the English literacy requirement for voting a violation of the Equal Protection Clause of the Fourteenth Amendment and the prohibition of discrimination in the Fifteenth Amendment because its purpose and effect is to discriminate against specific groups in the population?

3. Does the New York English literacy requirement violate the Fourteenth and Fifteenth Amendments because it contains an impermissible "grandfather clause"? 1/

1/ The American Jewish Congress sought consent to file an amicus curiae brief in Katzenbach v. Morgan, October Term 1965, Nos. 847 and 877 as well as in this case. Consent was granted by the United States, the State and City of New York but not by the appellee. Accordingly, we do not discuss in this brief the question whether Congress validly nullified the New York English literacy requirement, in whole or in part, by adopting Section 4(e) of the Voting Rights Act of 1965. We note, however, that a decision in the Morgan case upholding the validity and effectiveness of Section 4(e) would not dispose of the issues to which this brief is addressed or render them moot. Section 4(e) does not invalidate the New York voting limitation in toto but merely suspends it as to persons educated in American-flag schools. Other American citizens, not literate in English, would be barred from voting in New York even if Section 4(e) were upheld.

INTEREST OF THE AMERICAN JEWISH CONGRESS

The American Jewish Congress was formed in part "to help secure and maintain the equality of opportunity * * * to safeguard the civil, political, economic and religious rights of Jews everywhere" and "to help preserve and extend the democratic way of life." It has a special interest in assuring equal recognition of the social, economic and political interests of minority groups and it combats discrimination against such groups whether on grounds of race, religion or national origin or because of the expression of unpopular views.

It is the belief of the American Jewish Congress that the disenfranchisement of American citizens of Puerto Rican origin effected by the English literacy test established in New York is wholly unjustifiable and tends to perpetuate the hardships that this substantial minority group faces in its attempts to become part of the mainstream of American society. Although there were in the past a number of American citizens of the Jewish faith who were disenfranchised by the requirement of English literacy, the major impact of this inequitable requirement falls today upon the Puerto Rican American who is literate only in the language native to his place of birth in this country.

No right is more cherished or more important to any segment of United States citizenry than the right to vote and to be heard by the executive, legislative, and judicial branches of the government. To shut off the voice of this substantial group of persons who reside within a fairly limited geographical area in the City of New York is to deprive them of their single most important political right.

The denial of appellant's application for relief continues in effect a set of laws which are inimical to two of the basic traditions of this country -- universal adult suffrage and cultural pluralism. The issues presented on this appeal raise serious questions concerning the very core of our republican form of government and the preservation of American democratic principles.

SUMMARY OF ARGUMENT

I. A. Denial of the right to vote to one who is literate in a language other than English in common use in the community in which he resides deprives him of the privileges and immunities as a citizen of the United States and also of his liberty as a person, in violation of the Fourteenth Amendment.

The right to vote is an essential element of our democratic system which can be denied only upon the clearest evidence that the denial is required by the common weal. The state cannot and has not shown that disenfranchisement of appellant and others similarly situated is unquestionably necessary to achieve intelligent exercise of the ballot.

B. The right to vote impaired by the New York English literacy requirement should be found to be a privilege and immunity of Federal citizenship, protected against impairment by the Fourteenth Amendment. We urge the Court to reach this result, overruling or limiting, if necessary, its decision in the Slaughter-House Cases, 16 Wall 37 (1873).

C. The same result can be reached under the Due Process Clause of the Fourteenth Amendment, since it is plain that the term "liberty" as used in that Amendment includes the fundamental freedoms upon which our democratic society rests, including the right to vote.

II. A. The New York English literacy requirement violates the prohibitions of discrimination contained in the Fourteenth and Fifteenth Amendments.

B. The history of the New York requirement clearly demonstrates that its purpose was to discriminate against later arriving persons who were not of "Anglo-Saxon stock." The arbitrary character of the requirement further supports the view that its purpose was not to protect the voting process.

C. A state literacy test which is intended to and is effective to discriminate among voters on the basis of national origin is unconstitutional under both the Fourteenth and Fifteenth Amendments.

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C. A state literacy test which is intended to and is effective to discriminate among voters on the basis of national origin is unconstitutional under both the Fourteenth and Fifteenth Amendments.

III. The New York English literacy test is a "grandfather clause" which perpetuates discrimination in a manner that violates the Fourteenth and Fifteenth Amendments. It effects the same discrimination condemned in previous decisions of this Court dealing with grandfather clauses.

A R G U M E N T

POINT ONE

DENIAL OF THE RIGHT TO VOTE TO ONE WHO IS LITERATE IN A LANGUAGE OTHER THAN ENGLISH, WHICH IS IN COMMON USAGE IN THE COMMUNITY WHEREIN HE RESIDES, DEPRIVES HIM OF HIS PRIVILEGES AND IMMUNITIES AS A CITIZEN OF THE UNITED STATES AND HIS LIBERTY AS A PERSON IN VIOLATION OF THE FOURTEENTH AMENDMENT.

A. The Role of the Right to Vote in Our Constitutional System

The one element of a democratic government which, above all others, distinguishes it from all other forms of government is the participation of the people in the selection of those who govern them. We dissolved the political bonds which connected us with England because its King denied us that right, and in our declaration of the causes which impelled the separation we asserted that only those powers are justly exercised as are derived from the consent of the governed. The Constitution which conferred powers on the independent government established after the severance was ordained by "We, the people."

Ideally, the consent of the governed is best exercised by the direct "town meeting" vote of the people on every legislative proposal -- a procedure known in political science as pure democracy. This, obviously, was hardly practicable in 1787 and is even less so today. Our Constitution, therefore, set up the next best thing -- representative government. Representative government, however, is democratic government only to the extent that the representatives are selected by the people they govern. This view has been expressed by this Court on many occasions.

Thus, in Yick Wo v. Hopkins, 118 U. S. 356, 370 (1886), this Court said:

> Though not regarded strictly as a natural right, but as a privilege merely conceded by society according to its will, under certain conditions, nevertheless it [the political franchise of voting] is regarded as a fundamental political right, because preservative of all rights. (Emphasis added.)

A more recent decision, Wesberry v. Sanders, 376 U. S. 1, 17 (1964) reemphasized that view:

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. (Emphasis added.)

And it gave perspective to that concept by a quotation from No. 57 of The Federalist (id. at 18):

> "Who are to be the electors of the Federal Representatives? Not the rich more than the poor; not the learned more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States * * *"

Again, in Reynolds v. Sims, 377 U. S. 533, 565 (1964), this Court said:

> * * * representative government is in essence self-government through the medium of elected representatives of the people and each and every citizen has an inalienable right to full and effective participation in the political processes of his state's legislative bodies.

There is, of course, always a gap between principle and practice. Objectives and ideals unavoidably find themselves compromised to the demands of political realities. Only the members of the House of Representatives were, in 1787, to be chosen "by the people." Senators were to be elected indirectly and were to be distributed upon a geographic rather than popular base. Inability to agree upon qualifications for voting impelled the constitutional fathers to leave the issue to the states for determination (with the significant command that they should be the same as imposed upon electors of the "most numerous branch of the state legislatures"), and within the states restrictions

on access to the ballot were numerous and widespread. Women and Negroes were universally disenfranchised. So too were paupers and in some states non-land-owners. In a few non-Christians and even, under some circumstances, non-Protestants, could not exercise their franchise. Cobb, The Rise of Religious Liberty in America, 502.

It was, however, not the purpose of the Constitution to freeze these impairments of democracy into our governmental structure for all time. The history of the United States is a chronicle of expanding democracy. Steadily we have been progressing towards the ultimate (even if, perhaps, never fully attainable) goal of universal franchise. Religious restrictions upon voting disappeared first; the era of Jacksonian democracy brought an end to most state property qualifications. Negroes and women later achieved constitutionally protected access to the polling places. United States Senators were required to appeal to the people directly for their votes. Residents of the District of Columbia were enfranchised at least in part and the poll tax was removed as a barrier to the ballot box in Federal elections.

It is true that most of these changes were effected by express constitutional amendment or statutory enactment. Nevertheless, the judiciary too has its responsibilities of office. Can it be doubted that were the requirement in the original New York constitution that applicants for citizenship and thus for the franchise abjure all foreign allegiance, "ecclesiastical as well as civil," effective today it would be adjudged unconstitutional by this Court? It was the judiciary, after long default by the legislature, which mandated, as far as possible, the democratic principle of one man, one vote.

Democratic expansion did not come to a halt in 1787, even as far as the judiciary is concerned. The secret ballot was unknown then, but there is no question that it would be constitutionally protected today. Real property

ownership qualifications for voting were widespread but even aside from the Fourteenth Amendment would this Court uphold a Congressional statute limiting the right to vote in the District of Columbia to persons owning real property? The United States has called upon this Court to declare unconstitutional the poll tax requirement for voting in state elections even though the Twenty-Fourth Amendment is expressly limited to Federal elections.

Whatever may have been the situation in 1787, we submit that American constitutional democracy today requires that no person may, except for the gravest reasons, be denied the right to participate in the election of the persons who exercise the power to govern him. As the Court said in Reynolds v. Sims, supra, 377 U. S. at 555:

> The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.

We submit that today, with the exception of children and the mentally incompetent, 2/ every person has an inherent right to vote and a governmental

2/ John Locke, godfather of the Declaration of Independence and our representative government, recognized the validity of these exceptions (Second Treatise on Government, Laslett, ed.):

> 55. Children, I confess are not born in this full state of Equality, though they are born to it. Their Parents have a sort of Rule and Jurisdiction over them when they come into the World, and for some time after, but 'tis but a temporary one. The Bonds of this Subjection are like the Swadling Cloths they are wrapt up in, and supported by, in the weakness of their Infancy. Age and Reason as they grow up, loosen them till at length they drop quite off, and leave a Man at his own free Disposal.
>
> * * *
>
> 60. But if through defects that may happen out of the ordinary course of Nature, any one comes not to such a degree of Reason, wherein he might be supposed capable of knowing the Law, and so living within the Rules of it, he is never capable of being a Free Man he is never let loose to the disposure of his own Will (because he knows no bounds to it, has not Understanding, its proper Guide) but is continued under the Tuition and Government of others, all the time his own Understanding is capable of that Charge. And so

deprivation of that right is constitutionally justifiable only upon the clearest evidence that it is required by the common weal. We submit further that this is one of the privileges and immunities guaranteed to the people by the Fourteenth Amendment against abridgement by the states and a liberty guaranteed by it against deprivation by the states without due process of law.

We are not required in this case to challenge disenfranchisement of felons and non-citizens. Nor need we here challenge the assumption in Lassiter v. Northampton County Board of Elections, 360 U. S. 45 (1949), that the state has a sufficient interest in the intelligent use of the ballot to justify conditioning it upon ability to read and write. Indeed, we can even concede that the most likely means of assuring the intelligent use of the ballot is to require literacy in the English language, even though thereby not only Spanish speaking citizens in New York but Japanese and Chinese speaking citizens in Hawaii are disenfranchised.

We submit, however, where an "inalienable Right" which is "of the essence of a democratic society" is concerned, it is not sufficient that the state has selected a likely method among various apparently reasonable alternatives. In such a situation the state is required to establish by the clearest evidence that no practicable alternative method to achieve a specific end exists other than disenfranchisement of citizens literate in a language other than English. We submit, finally, that in a community in which there are widespread organs

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Lunaticks and Ideots are never set free from the Government of their Parents; Children, who are not as yet come unto those years whereat they may have; and Innocents which are excluded by a natural defect from ever having; Thirdly, Madmen, which for the present cannot possibly have the use of right Reason to guide themselves, have for their Guide, the Reason that guideth other Man which are Tutors over them, to seek and procure their good for them, says Hooker, Ecc. Pol. Lib. Sec. 7. All which seems no more than that Duty, which God and Nature has laid on Man as well as other Creatures, to preserve their Off-spring, till they can be able to shift for themselves, and will scarce amount to an instance or proof of Parents Regal Authority.

of public communication in the citizen's tongue, such as newspapers, periodicals, radio and television, which regularly report and comment on matters of political interest and public concern, a state's determination that no practicable alternative exists cannot be sustained.

According to the 1959 Report of the United States Commission on Civil Rights, pp. 67-68, there are approximately 618,000 American citizens of Puerto Rican ancestry living in New York City. About 190,000 of them have lived here long enough to satisfy the state's residence requirements for voting. However, 59% of Puerto Rican residents of New York read and write only Spanish and are therefore not permitted to vote. Although the exact number so disenfranchised is not indicated in the Commission's report, it does state that "this Commission has found that Puerto Rican-American citizens are being denied the right to vote, and that these denials exist in substantial numbers in the State of New York."

We submit that only the most cogent grounds can justify the denial of the franchise to so substantial a number of American citizens who are residents of New York. It is quite reasonable that a court in reviewing the constitutionality of a statute should give great weight to the judgment of the legislature in its determination of the necessity of the legislation. Ordinarily, if a situation exists which the legislature deems to require legislative action, the courts will not interfere with its determination of the appropriateness of a particular remedy unless the legislature's act was patently unreasonable. United States v. Carolene Products Co., 304 U. S. 134, 152-3 (1958). Where, however, the legislation abridges a fundamental right of American citizens, a far sterner test is imposed. "The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice." Thomas v. Collins, 323 U. S. 516, 530 (1945). As was said in Thornhill v. Alabama, 310 U. S. 88, 95-96 (1940):

> Mere legislative preference for one rather than another means for combatting substantive evils, therefore, may well prove an inadequate foundation on which to rest regulations which are aimed at or in their operation diminish the effective exercise of rights so necessary to the maintenance of democratic institutions.

Where the legislation restricts the right to vote, the most stern judicial test is to be applied when its constitutionality is challenged. In United States v. Carolene Products, supra, 304 U. S. at 152-3, n. 4, the Court did not find it necessary "* * * to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation. * * *" In subsequent cases, however, the Court did find it necessary to pass upon the question and answered it in the affirmative. Thomas v. Collins, supra; Thornhill v. Alabama, supra.

The reason for the imposition of a sterner test in cases involving c fundamental liberties, particularly those affecting the franchise, is obvious. One may well urge that, in general, removal of unwise laws should be sought by appeal not to the court but to the ballot and to the processes of democratic government. But this necessarily implies that recourse to the ballot is unobstructed and that the processes of democratic government are kept free to operate. It follows that the Court should subject to a closer than ordinary scrutiny and impose more exacting standards in respect to legislative actions that obstruct the channels for legislative change. It little profits the Spanish-speaking Puerto Ricans that the literacy test assailed here can be removed by action of the legislature if they are barred from participating in the process of selecting the legislature. In such a case, the Court must assume something of the nature of a fiduciary for the protection of the otherwise

unprotected disenfranchised and must demand a strict accounting on the part of the legislature.

This is particularly so where the disenfranchised are a racial, religious or national minority. United States v. Carolene Products, supra; Meyer v. Nebraska, 262 U. S. 390 (1923); Farrington v. Tokushige, 273 U. S. 284 (1927).

This Court therefore must determine what legitimate end the assailed literacy test sought to achieve, and whether the use of the literacy test is a valid means to achieve that end. In this respect, we submit that the only legitimate end that could be sought to be achieved was to assure that citizens exercising their elective franchise have a reasonably intelligent understanding of the issues and the candidates upon whom they are called to pass judgment, so that they can make "intelligent use of the ballot." Lassiter v. Northampton County Board of Elections, supra, 360 U. S. at 51. 3/

3/ It is, we submit, beyond the constitutional power of the legislature to employ the grant or withholding of the elector's franchise as a means to induce persons to learn the English language. We do not challenge the power of the state to encourage and facilitate the learning of the English language by residents of the state. For that purpose the states and municipalities can and do provide free instruction in the English language for foreigners and engage in public campaigns to induce residents to learn English. However, to deny persons their constitutional right of engaging in the election of their government as a means to influence them to learn English is, we submit, a form of impermissible coercion.

In Meyer v. Nebraska, supra, this Court held that a state could not declare it a crime for persons to teach children a foreign language; and in Farrington v. Tokushige, supra, it held that the operation of a foreign language school could not be hampered by unreasonable and arbitrary regulations motivated by a desire to discourage the learning of a foreign language. In West Virginia State Board of Education v. Barnette, 319 U. S. 624 (1943), it held that the privilege of attending a free public school could not be withdrawn from children who refused to salute the flag or pledge allegiance to it. This, the Court held, was as much a form of coercion as the means employed in the Meyer and Tokushige cases. Since the legislature patently cannot coerce adult persons to learn the English language, it cannot achieve this end indirectly by withholding from them a constitutional right unless they do so.

It follows, therefore, that only if this Court finds by clear, cogent and convincing evidence that a person literate in a language other than English cannot intelligently exercise the ballot, can the statute assailed herein be upheld. It follows, also, that the burden of establishing this necessity is upon the state. The right of American citizens to vote in elections is a precious one, of which they should not be deprived except for the most grave reasons. It is not enough that persons literate in English may exercise the ballot more intelligently than those literate in Spanish. That college graduates may exercise the ballot more intelligently than elementary school graduates would not justify disenfranchisement of the latter. To justify the deprivation of so fundamental a right, the state must establish that such disenfranchisement is unquestionably necessary to protect the electoral process.

For the following reasons, we submit that there is no such cogent proof that literacy in English is necessarily required for intelligent exercise of the ballot as would justify the denial to so many American citizens of the fundamental democratic right to participate in the selection of their government:

1. The literacy in English qualification is barely a quarter of a century old. For a century and a half the State of New York, beginning with its Constitution of 1777, did not require literacy in English as a requisite to vote. During that period many illustrious and great persons were elected to high office in the State of New York. Three of its governors became Presidents of the United States. Certainly there is not the slightest evidence that, during this period, the fact that persons not literate in English participated in the selection of the government was in any way prejudicial to the public welfare.

2. Even today more than three-fifths of the States of the Union have no literacy qualification at all for voting. Thus, in 31 of the 50 states, one need not be literate in any language in order to cast a ballot. Lassiter v. Northampton County Board of Elections, supra, 360 U. S. at 52, n. 7. There is no reason to

believe that the administration of the government and laws in these states is inferior to that in the other 19 states. Without regard to whether the requirement of literacy is reasonable, we urge that, in view of the fact that three-fifths of the states require no literacy at all, there is no clear need for the requirement of literacy in English.

It should be noted further that of the 19 states which do have a literacy requirement only 12 specify that the literacy be in English. Hence, of the 50 states in the Union, fully 38 states do not require literacy in English as a qualification for voting.

3. Whatever might be the case in respect to some rarely used foreign language, literacy in so widely used a language as Spanish assures that the Spanish-speaking voter can be fully enough familiar with the issues and candidates presented to him to make an intelligent choice. As the United States Commission on Civil Rights has shown in its 1959 Report, p. 67, there are three Spanish-language newspapers, having a combined daily circulation of 82,000, published and distributed in New York. Two of these newspapers, El Diario and El Emparcial, have a format similar to that of the English language Daily News. Like the English-language prototype, the first six pages of El Diario and El Emparcial are mainly devoted to current political and civic issues. The more significant political and civic issues are explored further by featured columnists and in the editorials. Prior to September 17, 1959, La Prensa was much like the World Telegram and Sun and the Herald Tribune in format and coverage. Since that date the more popular tabloid form of layout has been adopted. However, the coverage is apparently as complete as before.

The Spanish newspapers use the same news services as the English press. In addition, there are a number of radio and television stations in New York regularly broadcasting news and news analyses in Spanish. These programs are listed in detail in the Spanish press.

Whatever need there may have been for literacy in English as a means of obtaining political information 40 years ago when the New York requirement went into effect, it has been largely if not completely eliminated by the advent of radio and television. In 1925, only 10% of the homes in the United States owned radio sets. By 1940, 82% owned radios, Bogart, The Age of Television, 10 (1956), and a study of that election concluded that "radio proved more effective than the newspaper" because of its "face-to-face contact with the principals" and the "personal relationship" established. Lazarsfield, Berelson and Gauder, The People's Choice, 128, 129 (second edition 1948). In 1956, 98% of the homes in the United States owned radios and 73% owned television sets. Bogart, supra. The percentages are undoubtedly higher today and the influence of radio and television upon voters has dwarfed the importance of the printed word. Thus, there is even less reason today to disqualify Spanish-speaking voters and continue to deny to them a most cherished right and privileges.

B. The English Literacy Requirement for Voting Violates the Privileges and Immunities Clause of the Fourteenth Amendment.

We believe we have established that there is no such compelling need for New York's English literary requirement as to justify denial of the right to vote to a substantial number of citizens. If so, the requirement is unconstitutional either as a denial of privileges and immunities guaranteed under the Fourteenth Amendment or as an impairment of a liberty protected by that Amendment's Due Process Clause. We deal with the latter concept below. Here, we urge that this Court reach the suggested result under the Privileges and Immunities Clause, overruling to whatever extent necessary its decision in the Slaughter-House Cases, 16 Wall. 37 (1873). We submit that the time has come to take that step toward restoration of the full intended effect of the Fourteenth Amendment.

"Unique among constitutional provisions, the Privileges and Immunities Clause of the Fourteenth Amendment enjoys the distinction of having been rendered a 'practical nullity' by a single decision of the Supreme Court rendered within five years after its ratification." Library of Congress Edition of the Constitution (1964), pp. 1075-1076. This came about because the Court interpreted the clause as limited to the protection of those privileges and immunities "which owe their existence to the Federal government, its National character, its Constitution, or its laws." Slaughter-House Cases, supra, at 79.

As has often been noted, this restrictive interpretation of the Clause makes it completely superfluous. Privileges and immunities so limited are already protected by the Supremacy Clause and by the Federal Government's inherent power to protect its own processes and institutions. McCulloch v. Maryland, 4 Wheat. 316 (1819). The decision in the Slaughter-House Cases sets forth among the examples of privileges which owe their existence to the National Government access to the Federal Courts. But can there be any doubt that, were there no Fourteenth Amendment, this Court would hold unconstitutional a law passed by a jealous state making it a criminal offense for its citizens to resort to the Federal courts for judicial redress of their grievances?

In United States v. Aaron Burr, 4 Cranch 470, 482, the greatest of Chief Justices noted that, "Every opinion to be correctly understood ought to be considered with a view to the case in which it was delivered." An examination of the circumstances surrounding the Slaughter-House Cases decision and of the later opinions of the Justices who joined in the majority and minority opinions indicates quite clearly that the underlying motivation of the majority of the Court was to forestall use of the Amendment as a means, urged by the appellants in the case, to censor and restrict state regulation of business. The majority therefore asserted that the sole "pervadirg purpose" of the Amendment was to assure "the freedom of the slave race."

The expectations or hopes of the majority were doomed to frustration. In succeeding years the Amendment was used far more to protect the interests of business than the rights of the Negro race; substantive due process provided an adequate and satisfactory alternate route after the road via privileges and immunities was closed.

In any event, nullification of the Privileges and Immunities Clause is today no longer necessary. The uniform holding and tenor of the Court's decisions from West Coast Hotel Co. v. Parrish, 300 U. S. 379 (1937) to Ferguson v. Skrupa, 372 U. S. 726 (1963) show unmistakably that the Court has no intention to use the Fourteenth Amendment to censor State regulation of business. We submit that the time has come for the Court to restore to privileges and immunities the meaningfulness it took from it in the Slaughter-House Cases. To paraphrase in reverse the words of Job, what the Court has taken away, the Court can give.

Specifically, what we urge is that the right of a citizen to participate in the selection of those who govern him is a privilege of citizenship of which the Fourteenth Amendment forbids deprivation by the State in the absence of the clearest evidence that deprivation is required to protect a paramount societal interest and that there is no available alternative to protect the interest.

Nor should the Court be deterred by undue concern for an extreme interpretation of the limitations imposed by the principles of federalism. Federalism is a means, not an end, and where federalism stands in the way of assuring to citizens their inalienable right to participate in the selection of their governors, it is federalism rather than the right which should yield ground. This, in any event, was the entire raison d'etre of the Fourteenth Amendment, as this Court has recognized in innumerable decisions.

Should, however, the Court decide that it cannot go so far, we submit that the same result be reached by a narrower interpretation of the Privilege

and Immunities Clause, one fully consistent with the restrictive interpretations in the Slaughter-House Cases as further interpreted in Twining v. New Jersey, 211 U. S. 78, 97 (1908). Insofar as elections to Federal office are concerned, it is hardly contestable that the right to participate therein owes its existence to the national government. If, as this Court held in Hague v. C. I. O., 307 U.S. 496 (1939), freedom to use municipal streets and parks for public discussion of a law enacted by Congress is a privilege or immunity which owes its existence to the national government, certainly so too is the freedom to participate in the election of members of the Congress that enacts the law. Hence, at the very least, the Court should hold the New York law unconstitutional in respect to elections for the President and members of Congress.

However, we urge the Court to go further. We submit that the powers and functions of a state legislature are so inextricably related to the national government that a deprivation of the right to vote for members of the state legislature impairs privileges and immunities protected by the Fourteenth Amendment. We note, for example, that when a state legislature passes upon a resolution to amend the Federal Constitution, it is exercising a power and responsibility which is derived from the national government through the national Constitution. Hawke v. Smith, 253 U. S. 221 (1920); so, too, when it prescribes the rules and regulations for primaries at which candidates for Federal office are selected (Smith v. Allwright, 321 U. S. 649 (1944), or when it apportions districts from which members of the House of Representatives are elected (5 Stat. 491 (1842)); Wesberry v. Sanders, 376 U. S. 1 (1964), or when it calls upon the national government to protect it against domestic violence (U. S. Constitution, Article IV, Sec. 4).

Nor is this interdependency of Federal and State governmental functions limited to the legislature. The right of a state governor to demand extradition

from another state has its source in the Federal Constitution (Article IV, Sec. 2), as has the right to call upon the national government for protection against domestic violence (Id., Sec. 4).

Even the state judiciary exercises powers whose source is in the national government. Its judicial proceedings are accorded extraterritorial effectiveness only by reason of the Full Faith and Credit Clause of the National Constitution (Article IV, Sec. 1).

Finally, we note the many and ever-increasing instances of what has been called cooperative federalism--the joint efforts of the national government and the states in achieving such common objectives as security against want in old age or in unemployment or extended education on the elementary, secondary and college level or provision for the ill and physically injured who require hospital care.

These and many other instances can be cited in support of our basic proposition--that the Federal and state governments are so inextricably interrelated and interdependent that deprivation of the right to participate in the selection of state government directly and inevitably impairs privileges and immunities whose source is in the national government.

C. The English Literacy Requirement for Voting Violates the Due Process Clause of the Fourteenth Amendment.

Finally, we submit that the result urged herein can be achieved under the Due Process Clause of the Fourteenth Amendment. Ever since Gitlow v. New York, 268 U. S. 652 (1925), this Court has recognized that the term "liberty" in the Fourteenth Amendment encompasses much more than freedom from physical restraint, and includes the fundamental freedom upon which our democratic society rests. Can it be doubted that if "liberty" includes freedom of speech, press and assembly, it also includes freedom to choose those who exercise the compulsory powers of government? Is not a major reason for freedom of expression that it ensures

intelligent and responsible choice in the selection of those who exercise their just powers by reason of the consent of the governed? What does it profit a Spanish-speaking Puerto Rican that he has the right to hear all views on public issues if he is barred from exercising the right of suffrage on the basis of conclusions reached after constitutionally-protected exposure to these views? Freedom of speech would be an illusory right if the listeners were forbidden to act upon what they heard.

Of course, due process extends beyond "citizens" to "persons." We do not here contend that restricting the ballot to citizens unconstitutionally deprives non-citizens of their liberty under the Fourteenth Amendment. Only such deprivations as are "without due process of law" are forbidden by the Amendment, and it may well be held that a requirement of citizenship is within the purview of due process. We urge only that, for the reasons heretofore stated, disenfranchisement of citizens who are literate, though in a language other than English, does constitute a deprivation of liberty without due process of law.

POINT TWO

THE NEW YORK REQUIREMENT OF LITERACY IN ENGLISH IS NOT ONE REASONABLY RELATED TO ANY VALID CONSTITUTIONAL PURPOSE BUT WAS INTENDED TO AND HAS THE EFFECT OF DISCRIMINATING AGAINST AN ISOLATED MINORITY GROUP IN VIOLATION OF THE FOURTEENTH AND FIFTEENTH AMENDMENTS.

In Point One, we have assumed that the English literacy requirement was in fact adopted by New York State for the purpose of insuring intelligent voting, arguing only that no sufficient case could be made for limiting the franchise in this fashion. We here urge that the requirement is in fact a restriction aimed at specified groups in the population and, as such, is a violation of the Equal Protection Clause of the Fourteenth Amendment and the prohibition of discrimination based on race or color in the Fifteenth.

A. Limitations on the Power of the State to Restrict the Right to Vote.

Although a state may within certain limitations prescribe the qualifications of voters as provided by the Constitution of the United States, Article I, Section 2, the basic right to vote, at least in general elections, is not derived from state law but is "a right secured by the Constitution." Smith v. Allwright, 321 U. S. 649, 662 (1944). See also, U. S. v. Classic, 313 U. S. 299 (1941); Wiley v. Sinkler, 179 U. S. 58 (1900); Ex parte Yarbrough, 110 U. S. 651 (1884). There are several qualifications that a state may not require of voters. Race, color, or previous condition of servitude as well as sex are specifically barred as permissible standards by the Fifteenth and Nineteenth Amendments. Nor may a state prescribe qualifications which contravene the Equal Protection Clause of the Fourteenth Amendment. Nixon v. Herndon, 273 U. S. 536 (1927); Nixon v. Condon, 286 U. S. 73 (1932). "The traditional test under the Equal Protection Clause has been whether a State has made 'an invidious discrimination,' as it does when it selects 'a particular race or nationality for oppressive treatment.' See Skinner v. Oklahoma, 316 U. S. 535, 541 * * *." Baker v. Carr, 369 U. S. 186, 244 (1962) (concurring opinion). Thus, while a state has the lawful power to alter its subdivisions, if in doing so it singles out a readily isolated segment of a racial minority for special discriminatory treatment it violates the Federal Constitution and its otherwise lawful act is overcome by the prohibitions contained therein. Gomillion v. Lightfoot, 364 U. S. 339 (1960).

B. The Discriminatory Intent and Effect of the New York English Literacy Requirement.

A proposal that the right to vote in New York State be limited to those literate in English was proposed at a Constitutional Convention held in 1915. After full debate, which is a matter of public record, the proposal was defeated. Nevertheless, it was renewed at the 1917 session of the New York State Legislature

and was approved by both chambers. N. Y. L. 1917, pp. 2785, 2786. It was passed again at the 1919 session of the Legislature (N. Y. L. 1919, pp. 1790, 1791), and was placed on the ballot for popular vote in the 1921 election. It was approved by the voters that year. N. Y. L. 1922, p. 1849.

Although the constitutional provision imposing a literacy test was defeated at the 1915 Constitutional Convention, the debates at the sessions of that body are the best available evidence of the basis on which the case for the proposal rested. (There is no public record of the debates in the New York State Legislature.)

The provision requiring literacy in "the mother tongue" was first proposed at the Convention by Charles H. Young who said, in support of the amendment:

> More precious even than the forms of government are the mental qualities of our race. While those stand unimpaired, all is safe. They are exposed to a single danger, and that is by constantly changing our voting citizenship through the wholesale, but valuable and necessary infusion of Southern and Eastern European races * * * The danger has begun * * * We should check it * * *. 3 New York State Constitutional Convention 3012 (revised record of 1916) (emphasis added).

The level of the arguments in favor of the proposal is illustrated by the remarks of Gordon Knox Bell, who said:

> Gentlemen, we must stop to think of what we are. This is not a question of nations, it is a question of races, and when all is said and done, there is not a man in this room who dares deny that we are an English race, born and bred, and brought up with the traditions of the men of England; of Anglo-Saxon stock. Id. at 3015 (emphasis added).

Mr. Bell traced the history of the settlement of England and, although denying that he was an "Anglo-maniac," concluded after an astounding outburst, that if there were any greater word than "Englishman" it must be the word which signifies that heritage as embodied in our language. Id. at 3015-17.

The proposal was recognized as an attempt to prevent the assimilation of "alien blood" into the supposedly pure Anglo-Saxon heritage of the nation by

segregating and excluding foreign-born Americans from the rights, privileges and opportunities of full citizenship. Its proponents impugned the patriotism of Yiddish-speaking citizens and demeaned almost every national group other than the English. In opposition to the proposal, Mr. Nathan Burkan made the following plea:

> The highest and most priceless privilege of a citizen is the right to participate and have a voice in the government -- the right to vote for all officials and for the adoption and rejection of fundamental laws.
>
> * * *
>
> It is abhorrent to believe that those who toil by the sweat of their brows, who create and improve prosperity, who aid in the development of the great resources of this state and in the building up of its industries and commerce shall be disfranchised because they cannot comply with an irksome test. Id. at 3152-53.

Robert F. Wagner, late United States Senator from New York, said of the proposed requirement:

> * * * Obviously that proposal is directed against the foreign born American. Remembering that the great mass of foreigners that come annually to our shores are assimilated into and become part and parcel of the American people because they strive and hope and succeed in acquiring the right to vote, can you not recognize in the amendment a clandestine effort to prevent this assimilation of alien blood into our citizenship and to segregate and exclude the foreigner from the rights, the privileges and the opportunities which we have always held out to all men?
>
> * * *
>
> /I/n so far as you dare to go, you take from /the foreigner/ the opportunity and the privileges which your ancestors enjoyed when they like the immigrants of today found in this land a refuge from the very spirit of intolerance and hate which finds expression in this amendment. Id. at 3022-23.

In short, the case for the voting restriction was strikingly similar to that made, during this period, in Oregon for a statute prohibiting instruction of children in a foreign language -- that that practice was "inimical to our own

safety" because the children would "always think in that language." Meyer v. State, 107 Neb. 657, 187 N. W. 100 (1922). That decision, of course, was reversed by this Court. Meyer v. Nebraska, 262 U. S. 390 (1923).

The period during which the constitutional provision was thereafter approved by the Legislature and the voters, during and after World War I, was marked by inflammation of national hatred of minority groups, particularly aliens and recent citizens of foreign extraction. The end of hostilities did not stem the tide. In addition to the enactment and enforcement of various sedition, anarchy and criminal syndicalism laws, there was widespread interference with free expression in the form of seizures of newspaper files, restrictions on mailing rights and prosecutions of educators and others for "disloyal language." This period also saw the enactment of the national immigration law establishing the offensive national origins quota (recently repealed), legislation presaged by the mass deportations of aliens without even a semblance of due process, characterized by Professor Zechariah Chafee as "wholesale deportation for ideas." Chafee, Free Speech in the United States 237 (1948). The free speech controversy during the war and the restrictive legislation following the war led Charles Evans Hughes to wonder "whether constitutional government as heretofore maintained in this republic could survive another great war even victoriously waged." Id. at 102.

Oregon enacted legislation outlawing all private and parochial schools. Several states, like Nebraska, passed laws making it a crime to teach foreign languages, or to teach any subject in a foreign language, to children in grade school. In New York, six of twelve laws characterized as affecting freedom of speech were enacted during the period 1917 to 1921. Id. at 590-91. The Mayor of the City of New York, after the Armistice of 1919, banned the performance of operas in the German language. Star Opera Co. v. Hylan, 109 Misc. 132, 178 N. Y. S. 179 (1919).

But it was the Legislature of New York, during the very period in which it submitted the English literacy requirement for adoption, that most vividly displayed hostility to the "foreign-born" in its notorious expulsion of the five lawfully elected Socialist assemblymen in 1920 -- truly a repudiation of government by representation and the disfranchisement of the assemblymen's constituents. At a hearing likened to the Salem witch trials, amid testimony involving a "little red book" in Yiddish and a fantastic story by a young girl that one of the five had "spit upon the American flag," the speaker of the New York State Assembly charged that the Socialist Party was "not truly a political party, but is a membership organization admitting within its ranks aliens, enemy aliens and minors." Despite vigorous editorial comment branding the action of the assembly a "legislative lynching," the powerful forces spawned by extreme chauvinism and xenophobia marched onward. See Chafee, op. cit. supra at 278-79; Waldman, Albany: The Crisis in Government xvi, xvii, 4, 25-27, 40-42 (1920).

The fact that New York's English literacy requirement was not in fact designed to advance intelligent voting is shown not only by its history and background but also by the arbitrary and unreasonable nature of some of its provisions If actually aimed at assuring that voters have the ability to acquire information about elections, why should New York require that persons be able to write as well as read English? The only writing necessary properly to exercise the franchise of voting involves simply the writing of one's own name. Must a person be able to communicate election information to others in order to be able to vote intelligently? Furthermore, an exception is made for all persons who cannot read or write English because of physical handicaps and also for veterans. Election Law, Sections 155, 168(6), 201. The ability of such persons to acquire information about elections is, in many cases, substantially less than that of persons literate only in Spanish. These exceptions, we submit, buttress the

conclusion that the thrust of the voting restrictions is to penalize persons whose native language is other than English.

Another indication that the New York literacy-in-English requirement was enacted for an unlawful and unconstitutional purpose rather than as a bona fide attempt to assure an informed electorate is the "Grandfather Clause" contained in the provision of the New York constitution which establishes the test. This aspect of the law is discussed in detail in the next section of this brief as an independent reason for invalidating the test. It is, however, pertinent to note here this added indication that the clause, as written, represents an unreasonable requirement enacted for an unconstitutional purpose.

C. A State Literacy Test Which is Intended to and is Effective to Discriminate Against National Origin Groups is Unconstitutional.

For the purposes of this aspect of this brief, we do not contend that a literacy test may never be justified as a reasonable attempt to assure an independent and intelligent electorate. Cf. Lassiter v. Northampton County Board of Elections, supra; Stone v. Smith, 159 Mass. 413, 34 N. E. 521 (Mass. 1893). However, if state legislation establishing such a test is on its face merely a device to effect prohibited discrimination or, though fair on its face, may be or is employed to perpetuate discrimination, it is unconstitutional. Davis v. Schnell, 81 F. Supp. 872 (S. D. Ala.), aff'd. mem., 336 U. S. 933 (1949). Cf. Lassiter, supra, 360 U. S. at 50, 53. Nor is a literacy test valid if literacy is "used as a cloak to discriminate against one class or group." Gray v. Sanders, 372 U. S. 368, 379 (1963) (emphasis added).

In Pope v. Williams, 193 U. S. 621 (1904), which upheld the reasonableness of a non-discriminatory residence requirement, this Court noted that the situation would be different where a statute presented a possibility of violating the Federal Constitution. Interestingly, the hypothetical situation there

contemplated as an example of an "extreme case"--discrimination between persons coming from different states (i.e. Georgia and New York)--is similar to the instant case where the proscription, in its operation, necessarily discriminates against persons coming from Puerto Rico where Spanish is the native language as against persons coming from the United States mainland. The New York Legislature has singled out United States citizens of Puerto Rican origin and other later-arriving "foreigners" who are literate only in Spanish--a readily isolated minority group living in a localized area under marginal conditions--and has deprived them of the vote, one of their strongest weapons for improving their lot and equalizing their opportunities. Cf. Carrington v. Rash, 380 U. S. 89 (1965); Mabry v. Davis, 232 F. Supp. 930 (W. D. Tex. 1964).

The words "race" and "color" as used in the Fifteenth Amendment are not to be confined to a narrow, technical meaning. They include nationality groups, such as non-English speaking persons of Puerto Rican origin. See Comacho v. Rogers, 199 F. Supp. 155, 160 (S. D. N. Y. 1961). The proponents of the New York constitutional provision here in question referred to such nationality groups as "races," and the requirement of English literacy was intended to discriminate on the basis of "race" in violation of the Fifteenth Amendment.

In any event, discrimination based upon either "race or place of origin" is unconstitutional. See Wright v. Rockefeller, 376 U. S. 52, 58 (1964). The dissenting opinion in the lower court in that case is particularly illuminating:

> * * * the above uncontradicted picture establishes per se a prima facie case of a legislative intent to draw congressional district lines * * * on the basis of race and national origin. To me it fits four square with Mr. Justice Frankfurter's statement in Gomillion v. Lightfoot * * * that the act in question was not an ordinary geographical re-districting measure even with the familiar abuses of gerrymandering. Although Justice Frankfurter's statement referred to the court's holding that there was a violation of the fifteenth amendment this statement is equally apposite to the equal protection clause of the fourteenth amendment under Brown v. Board of Education * * *

> Cf. the concurring opinion of Mr. Justice Whittaker in Gomillion at 349 * * * The conclusion here is, as in Gomillion, irresistible, tantamount for all practical purposes, to a mathematical demonstration that the legislation was solely concerned with segregating white, and colored and Puerto Rican voters * * *
>
> * * * The pattern * * * shows that they were drawn so that any district lines encompassing these areas would necessarily include a very high percentage of non-whites and Puerto Ricans * * *
>
> We are told that the fifteenth amendment nullifies sophisticated as well as simple-minded discrimination. In my judgment the New York legislature has attempted, in violation of the equal protection clause of the fourteenth amendment, a sophisticated and subtle discrimination * * * Wright v. Rockefeller, 211 F. Supp. 460, 472-75 (S. D. N. Y. 1962) (dissenting opinion) (emphasis added).

In several recent cases, the federal courts have stricken down discriminatory applications of voting requirements by the states. See U. S. v. Clement, 231 F. Supp. 913 (W. D. La. 1964); U. S. v. Palmer, 230 F. Supp. 716 (E. D. La. 1964). A literacy test designed and used to discriminate against Negroes was held to violate the Fourteenth and Fifteenth Amendments. U. S. v. Louisiana, 225 F. Supp. 353 (E. D. La. 1963), affirmed, 380 U. S. 145 (1965). Where the purpose and effect of state requirements are to discriminate, the law is unconstitutional and the motive of the legislators in enacting the law is of importance in making such determination. See U. S. v. Mississippi, 229 F. Supp. 925, 982 (S. D. Miss. 1964) (dissenting opinion), reversed, 380 U. S. 128 (1965). The Lassiter case does not hold that a literacy test chosen to deny, not grant, voter privileges is free from attack.

It may be that a state can constitutionally use a literacy test to attempt to assure that all voters are capable of becoming sufficiently informed to make a considered judgment when they cast their ballots. At the other end of the spectrum, it is clear that a voter qualification test designed to weed out persons who would tend to vote certain beliefs or favor certain persons or political

parties is unconstitutional. Carrington v. Rash, supra, 380 U. S. at 94 (1965). Thus, a test barring persons who are wholly illiterate could more easily be justified than, say, an IQ test. Certainly, an IQ test with a minimum passing score of 120 established on the theory that only such exceptional persons can "properly" cast their ballots is repugnant to democratic principles and unconstitutionally discriminatory as well. If a Southern state were to conduct a survey of its population with respect to certain criteria which have been held individually to constitute valid limitations on the right to vote (e.g. one-year residence in the state, literacy, no felony convictions) and then enacted those requirements which, according to its survey, would disenfranchise a maximum number of Negroes while permitting a maximum number of whites to vote, would not this Court strike down the plan?

While the New York legislators were not as blunt as members of the Constitutional Convention which enacted the Louisiana literacy test (see U. S. v. Louisiana, supra, 225 F. Supp. at 373, 374), the debates referred to above leave little doubt that the basic motive and purpose behind the enactment of the New York English literacy test was to deprive later-arriving immigrants of their vote. The Puerto Rican influx had not yet begun at the time the New York test was enacted and, if there was any particular group at which the test was aimed, it was probably the large Yiddish-speaking community. Due to unforeseen circumstances, the most effective deprivation now occurs not with respect to immigrants but to native American citizens of Puerto Rican origin who have migrated to New York, although there are also a number of American citizens of the Jewish faith who are still disenfranchised by the requirement of English literacy.

Both the intent of the legislation and its actual effect are important fields of inquiry in order to determine whether it is constitutional. See Oyama v. California, 332 U. S. 633, 651 (1948) (concurring opinion). In the Oyama case,

Justice Murphy noted that the legislation in question was "spawned of the great anti-Oriental virus" that infected the nation at the time. Id. at 651. The New York English literacy test was spawned from an invidious anti-foreigner virus and the victimized class will "necessarily include a very high percentage of Puerto Ricans" as in Wright v. Rockefeller, supra. It is an unreasonable restriction enacted for the unlawful purpose of discriminating against non-English speaking persons by depriving them of the right to vote.

POINT THREE

THE NEW YORK ENGLISH LITERACY REQUIREMENT IS AN UNCONSTITUTIONAL "GRANDFATHER CLAUSE" CLEARLY VIOLATIVE OF THE FOURTEENTH AND FIFTEENTH AMENDMENTS TO THE FEDERAL CONSTITUTION.

The New York constitution excludes from the requirement of literacy in English all persons who were "entitled to vote by attaining majority, by naturalization or otherwise" prior to January 1, 1922. Residents of New York possessing all the qualifications of voters prior to that date but who have never exercised their right to vote are, nonetheless, exempt from the literacy test. Ferayorni v. Walter, 121 Misc. 602, 202 N. Y. S. 91 (1923). However, any person who establishes residence in New York after that date must prove his literacy in English. Op. Atty. Gen., 48 St. Dept. 179 (1933). Thus, American citizens of Puerto Rican origin, even native-born citizens like appellant, who had not established residence in New York prior to 1922 have not been able since that date to register and vote in New York (although they may have voted in elections in the United States for many years) if they are literate only in Spanish, the language native to their place of birth and education in the United States. By contrast, persons who were merely eligible to vote in New York prior to 1922, although wholly illiterate, have been and are today eligible to vote. Special assistance may be rendered only to such illiterates who "became entitled to vote on or before January first, nineteen hundred twenty-two." Election Law, Sections 169, 199.

Any possibility that the cutoff provision was reasonably related to a valid administrative purpose is negated by the wholly unjustified breadth of the exemption (see e.g., Election Law, Sections 155, 168(6)) and the unwarranted inclusion in the exempt class of all persons then eligible to vote although they had never voted and might not first register until many years after the literacy requirements were in effect.

In Guinn v. United States, 238 U. S. 347 (1915), this Court struck down a state-imposed prerequisite for voting which required a literacy test in English for all residents of Oklahoma except any person "who was, on January 1, 1866, or at any time prior thereto, entitled to vote under any form of government or who at that time resided in some foreign nation and (any) lineal descendant of such person." Although aimed at excluding later-arriving foreigners, not a minority group already residing within the state, in all material particulars the New York test shares the fatal defects of the Oklahoma legislation.

One of the bases of the Guinn decision was the pattern of discrimination established by the legislation. This Court there adopted the description of the statute given by the Solicitor General (238 U. S. at 352, 364):

> The necessary effect and operation of the Grandfather Clause is to exclude practically all illiterate Negroes and practically no illiterate white men, and from this its unconstitutional purpose may legitimately be inferred.
>
> * * *
>
> In practical operation the amendment inevitably discriminates between the class of illiterate whites and illiterate blacks as a class to the overwhelming disadvantage of the latter.

In 1957, a Grandfather Clause similar to the one considered in Guinn, but which required that, to be exempt from the special voting prerequisites, a person must have been permanently registered to vote prior to 1908, was declared clearly violative of the Fourteenth and Fifteenth Amendments to the United States

Constitution. Lassiter v. Taylor, 152 F. Supp. 295, 297 (N. C. 1957). When the matter reached this Court, the Grandfather Clause had been repealed but this Court observed (360 U. S. at 49-50):

> Appellant points out that although the cut-off date in the grandfather clause was December 1, 1908, those who registered before then might still be voting. If they were allowed to vote without taking a literacy test and if appellant were denied the right to vote unless she passed it, members of the white race would receive preferential privileges contrary to the command of the Fifteenth Amendment.* * *

In New York today there are persons 65 years old and older who may vote (even if for the first time) without taking the literacy test whereas appellant and a substantial number of other persons similarly situated may not vote unless they pass a test measuring literacy in English, the exact form of preferential privilege which this Court held clearly unconstitutional in the Guinn and Lassiter cases. That the discrimination is based upon "place of origin" rather than race is irrelevant. See Wright v. Rockefeller, 376 U. S. 52, 58 (1964).

While the provision exempting "lineal descendents" was significant and gave rise to the "grandfather" designation, the cases do not limit their reasoning to clauses containing such a provision. In addition to emphasizing the pattern of discrimination between voters similarly situated, this Court in Guinn noted that the legislation (238 U. S. at 364-5):

> * * * contains no express words of an exclusion from the standard which it establishes of any person on account of race, color or previous condition of servitude prohibited by the fifteenth amendment, but the standard itself inherently brings that result into existence since it is based purely upon a period of time before the enactment of the 15th amendment and makes that period the controlling and dominant test of the right of suffrage.

The New York situation is similar. At the cutoff date there were relatively few Puerto Ricans or other nonwhite, foreign-speaking persons in New York who could qualify to vote by virtue of the exemption of then-eligible voters.

The timing of the English literacy requirement was, as we have seen, for the purpose of excluding the expected influx of non-English "races." It was also provided by statute that a certificate or diploma evidencing completion of the 8th grade in a school in which English is the language of instruction is acceptable proof of literacy. Election Law, Section 168. This latter provision virtually assures that all persons educated on the United States mainland, where compulsory education in the English language is the rule, will be eligible to vote although a substantial number may be functional illiterates. Thus, the pattern of invidious discrimination established by the Grandfather Clause is continued and reinforced.

That the original discriminatory purpose for enacting the New York clause was not directed against the particular group which is most directly affected by the resultant legislation is of no consequence. Quoting directly from Guinn, but substituting "Puerto Ricans" for "Negroes," it is clear that the New York Grandfather Clause excludes "practically all illiterate (Puerto Ricans) and practically no illiterate white men, and from this its unconstitutional purpose may legitimately be inferred." Guinn v. U. S., supra, at 352. It "discriminates between illiterate whites and illiterate (Puerto Ricans) as a class, to the overwhelming disadvantage of the latter." Ibid. Despite the absence of "express words of an exclusion from the standard which establishes it of any person on account of" prohibited grounds, "the standard itself inherently brings that result into existence." Id. at 364, 365.

A state undoubtedly has power to enact stricter voter requirements. However, any new requirement must be truly prospective and free from any resultant discrimination against racial or ethnic groups, especially where it can fairly be said that such discriminatory effect (or a similar effect) was the purpose of the enactment.

> * * * on a subject like the one under consideration involving the establishment of a right whose exercise lies at the very basis of government a much more exacting standard is required than would ordinarily obtain. * * * Id. at 366.

As in the Guinn case, the whole of the one-sentence New York constitutional provision regarding literacy in English must fall as an unconstitutional Grandfather Clause.

Conclusion

In Meyer v. Nebraska, supra, this Court said (262 U. S. at 401):

> The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution--a desirable end cannot be promoted by prohibited means. (Emphasis added.)

We submit that, to appellant and other Americans who were not "born with English on the tongue," the "protection of the Constitution" means little if they are not allowed to vote. The provisions in the New York State Constitution and the Election Law imposing literacy in the English language as a prerequisite for voting and barring from the ballot persons completely literate in another language should therefore be held unconstitutional and the decision of the court below should be reversed.

Respectfully submitted,

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Attorneys for American Jewish Congress
Amicus Curiae

March, 1966.

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CHASE MANHATTAN BANK VS. POTTER, PAUL et al. NEW YORK 1965
(SOUTH AFRICA DEMONSTRATION)

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At a Special Term, Part I of the Supreme Court of the State of New York, held in and for the County of New York, at the County Court House, 60 Centre Street, in the Borough of Manhattan, in the City, County and State of New York, on the 18th day of March, 1965

P R E S E N T :

HON. GEORGE M. CARNEY,

Justice.

- -x

THE CHASE MANHATTAN BANK,

Plaintiff,

-against-

PAUL POTTER, MICHAEL DAVIS and STUDENTS FOR A DEMOCRATIC SOCIETY,

Defendants.

- -x

ORDER

Index No. 3804-1965

Plaintiff having moved this Court by order to show cause, dated March 15, 1965, for an order enjoining defendants from taking any steps which interfere with the property rights and interests of plaintiff and from holding any "sit-in" upon the property of plaintiff, or the adjacent street and sidewalks, and for other relief,

NOW, upon reading and filing said order to show cause dated March 15, 1965, the affidavit of Joseph T. Nolan, sworn to March 15, 1965, the complaint herein verified March 15, 1965, and the exhibits annexed thereto, all in support of said motion, and the affidavit of Michael R. Davis, sworn to March 17, 1965, and exhibits annexed thereto, submitted in opposition to said

motion, and after hearing Milbank, Tweed, Hadley & McCloy, Esqs. (C. Richard Stafford, Esq. of counsel) in support of said motion and Theodore Krieger, Esq., in opposition thereto, and due deliberation having been had and the decision of the Court having been entered in the record, it is

ORDERED, that the branch of said motion for a preliminary injunction enjoining defendants from holding any demonstration, meeting, "sit-in" or gathering of any kind upon the property of plaintiff be and the same hereby is granted; and it is

FURTHER ORDERED, that the branch of said motion for a preliminary injunction enjoining defendants from holding any demonstration, meeting, "sit-in" or gathering of any kind on the streets and sidewalk adjacent to the property of plaintiff be and the same hereby is denied; and it is

FURTHER ORDERED, that pending the trial and determination of the within action, the defendants and the members and associate members of, and all other persons acting in concert with, defendant Students for a Democratic Society, be and they hereby are enjoined from holding any demonstration, meeting, "sit-in" or gathering of any kind upon the property of plaintiff, including the premises known as Chase Manhattan Plaza located in the City of New York and the building thereon known as 1 Chase Manhattan Plaza.

E N T E R,

J.S.C.

I, C. RICHARD STAFFORD, an attorney at law associated with the attorneys for plaintiff, do hereby certify that I have compared the within order with the original and found it to be a true and complete copy thereof.

3/18/65

C. Richard Stafford

C. Richard Stafford

[illegible] et al. vs. Montgomery Library Board et al. Montgomery, Alabama [illegible]
(Public Library Facilities)

Please Retain Original Order

DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

- -

ROBERT L. COBB, a Minor, By and Through His Next Friend, GEORGE COBB, Individually and on behalf of all others similarly situated,

Plaintiff,

VS.

MONTGOMERY LIBRARY BOARD; Hon. EARL D. JAMES, Hon. L. B. SULLIVAN, Hon. FRANK W. PARKS, Individually and as Members ex-officio, Montgomery Library Board, and Montgomery Museum of Fine Arts Board of Trustees; W. E. GOODWIN, Individually and as Chairman of the Montgomery Library Board; and FERRIS J. MARTIN, JR., Individually and as Library-Director of the Montgomery Public Library; MONTGOMERY MUSEUM OF FINE ARTS BOARD OF TRUSTEES; MRS. WILLIAM MAHONEY, Individually and as President of the Montgomery Museum of Fine Arts Board of Trustees; and DONALD A. WINER, Individually and as Director of the Montgomery Museum of Fine Arts; and the successors in each such office of the Montgomery Library Board and of the Montgomery Museum of Fine Arts Board of Trustees,

Defendants.

- -

Civil Action No._____

LAWYER'S AFFIDAVIT

FILED
APR 27 1962
R. C. DOBSON
Clerk
By_____
Deputy Clerk

STATE OF ALABAMA)
) ss.
MONTGOMERY COUNTY)

CHARLES S. CONLEY, being duly sworn deposes and says:

1. That I am an attorney and solicitor of the State of Alabama and am attorney for the plaintiff herein.

2. That a policy, practice and usage exists in the City of Montgomery requiring enforced segregation in the use of public facilities, including the Montgomery Public Library and the Montgomery Museum of Fine Arts, which are reserved for the exclusive use of white citizens.

3. That in furtherance of the above stated policy of enforced segregation, a branch library was constructed for the use of the Negro citizens of Montgomery, Alabama, at 1276 Cleveland

Avenue, in the City of Montgomery, Alabama.

4. That the above stated policy, custom, practice and usage enforcing segregation in the use of the Public Library facilities and of the Montgomery Museum of Fine Arts, are in violation of the laws and Constitution of the United States.

5. That the relief sought, ought to be granted forthwith in that it is now a "closed question" of law that state sanctioned segregation of public facilities is unconstitutional. See Bailey v. Patterson, 82 S. Ct. 549(1962). In this connection see the dissenting opinion by the Hon. Richard T. Rives in the lower Court upheld by the Supreme Court. See Turner v. Randolph, 195 F. Supp. 677 (W.D. Tenn. 1961) on desegregating public libraries. Before the decision in favor of the plaintiff, the libraries were voluntarily desegregated in Memphis, Tennessee.

Charles S. Conley

CHARLES S. CONLEY

Sworn to and subscribed before me

this 26th day of April, 1962.

Calvin C. Tyson

Notary Public

DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

- -

ROBERT L. COBB, a Minor, By and Through His Next Friend, GEORGE COBB, Individually and on behalf of all others similarly situated,

Plaintiff,

VS.

MONTGOMERY LIBRARY BOARD; Hon. EARL D. JAMES, Hon. L. B. SULLIVAN, Hon. FRANK W. PARKS, Individually and as Members ex-officio, Montgomery Library Board, and Montgomery Museum of Fine Arts Board of Trustees; W. E. GOODWIN, Individually and as Chairman of the Montgomery Library Board; and FERRIS J. MARTIN, JR., Individually and as Library-Director of the Montgomery Public Library; MONTGOMERY MUSEUM OF FINE ARTS BOARD OF TRUSTEES; MRS. WILLIAM MAHONEY, Individually and as President of the Montgomery Museum of Fine Arts Board of Trustees; and DONALD A. WINER, Individually and as Director of the Montgomery Museum of Fine Arts; and the successors in each such office of the Montgomery Library Board and of the Montgomery Museum of Fine Arts Board of Trustees,

Defendants.

Civil Action No._____

MOTION FOR PRELIMINARY INJUNCTION

FILED
APR 27 1962
R. C. DOBSON
Clerk
By_____
Deputy Clerk

- -

Plaintiff, by and through his next friend, GEORGE COBB, moves the Court to grant a preliminary injunction enjoining the Defendants and each of them, their agents, servants, employees, and attorneys and all persons in active concert and participation with them, pending the final hearing and determination of this action and until the further order of this Court restraining them from making any distinctions based upon race or color in regard to service at the MONTGOMERY PUBLIC LIBRARY, and THE MONTGOMERY MUSEUM OF FINE ARTS on the grounds that:

(1) Unless restrained by this Court, defendants will commit the acts referred to;

(2) Such action by the defendants will result in irreparable injury, loss and damage to plaintiff and all others similarly situated

during the pendency of this action, as more fully appears from the Verified Complaint and the Affidavit of plaintiff, attached hereto and made a part hereof;

(3) That the issuance of a preliminary injunction herein will not cause undue inconvenience or loss to the defendants, but will prevent irreparable injury to the plaintiff and all others similarly situated.

Charles S. Conley

CHARLES S. CONLEY,
ATTORNEY FOR PLAINTIFF
Office and P. O. Address
530 South Union Street
Montgomery 4, Alabama

DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

- -

ROBERT L. COBB, a Minor, By and Through His Next Friend, GEORGE COBB, Individually and on behalf of all others similarly situated,	x	
Plaintiff,	x	
VS.	x	Civil Action No._____
MONTGOMERY LIBRARY BOARD; Hon. EARL D. JAMES, Hon. L. B. SULLIVAN, Hon. FRANK W. PARKS, Individually and as Members ex-officio, Montgomery Library Board, and Montgomery Museum of Fine Arts Board of Trustees; W. E. GOODWIN, Individually and as Chairman of the Montgomery Library Board; and FERRIS J. MARTIN, JR., Individually and as Library-Director of the Montgomery Public Library; MONTGOMERY MUSEUM OF FINE ARTS BOARD OF TRUSTEES; MRS. WILLIAM MAHONEY, Individually and as President of the Montgomery Museum of Fine Arts Board of Trustees; and DONALD A. WINER, Individually and as Director of the Montgomery Museum of Fine Arts; and the successors in each such office of the Montgomery Library Board and of the Montgomery Museum of Fine Arts Board of Trustees,	x	AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION
Defendants.	x	

- -

STATE OF ALABAMA)
) ss.:
MONTGOMERY COUNTY)

ROBERT L. COBB, being duly sworn deposes and says:

1. That he is the Plaintiff in the above-entitled action.

2. That this is an action for preliminary and permanent injunction to restrain the defendants from making any distinction based upon race or color, at the Montgomery Public Library, and The Montgomery Museum of Fine Arts.

3. That the affiant is a member of the Negro race, residing in the City and County of Montgomery, Alabama.

4. That on the 15th day of March, 1962, the plaintiff

sought to use the library facilities of the Montgomery Public Library, located at 445 South Lawrence Street, Montgomery, Alabama, but was told by the Director that plaintiff would not be allowed either to use the facilities at the Main Library, or to check out books, because of a City Ordinance, custom or practice which requires segregation in the use of the Library facilities, and that rules of the Library Board provide for the operation of the Public Library on a segregated basis.

5. That affiant was directed to leave the Montgomery Public Library and was further told that if he did not do so that the Montgomery City Police would be called.

6. That on the 15th of March, 1962, an officer or employee of The Montgomery Museum of Fine Arts, whose identity is unknown, informed the Plaintiff that the Museum was not opened and the facilities of the Museum were not available to the plaintiff and suggested that he must leave the museum building.

7. That the use of the facilities at the Montgomery Public Library, and the Montgomery Museum of Fine Arts were denied to the affiant by virtue of and because of his membership in the Negro race, and in violation of rights and privileges protected by the Fourteenth Amendment to the Constitution of the United States.

Robert L. Cobb
ROBERT L. COBB

Sworn to and subscribed before me

this 26 day of April, 1962.

Notary Public

CR

DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

- -

ROBERT L. COBB, a Minor, By and Through His Next Friend, GEORGE COBB, Individually and on behalf of all others similarly situated,

Plaintiff,

VS.

MONTGOMERY LIBRARY BOARD; Hon. EARL D. JAMES, Hon. L. B. SULLIVAN, Hon. FRANK W. PARKS, Individually and as Members Ex-Officio, Montgomery Library Board, and Montgomery Museum of Fine Arts Board of Trustees; W. E. GOODWIN, Individually and as Chairman of the Montgomery Library Board; and FERRIS J. MARTIN, JR., Individually and as Library-Director of the Montgomery Public Library; MONTGOMERY MUSEUM OF FINE ARTS BOARD OF TRUSTEES; MRS. WILLIAM MAHONEY, Individually and as President of the Montgomery Museum of Fine Arts Board of Trustees; and DONALD A. WINER, Individually and as Director of the Montgomery Museum of Fine Arts; and the successors in each such office of the Montgomery Library Board and of the Montgomery Museum of Fine Arts Board of Trustees,

Defendants.

- -

Civil Action No._____

COMPLAINT

FILED
APR 27 1962
R. C. DOBSON
Clerk
By_____
Deputy Clerk

1. Jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C., Sec. 1331(a), which provides as follows:

> "The district court shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States."

and under 28 U.S.C., Secs. 1343(3) and (4), which provide as follows:

> "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> * * *
>
> "(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
>
> "(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights. . . ."

and under 42 U.S.C., Sec. 1981, which provides as follows:

> "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and to no other."

and under 42 U.S.C., 1983, which provides as follows:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

and under 42 U.S.C., Sec. 1985(3), which provides as follows:

> "If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the law, or of equal privileges and immunities under the laws; . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

and under 42 U.S.C., Sec. 1988, which provides as follows:

> "Proceedings in vindication of civil rights. The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication. . . ."

and under the 13th and 14th Amendments to the Constitution of the United States.

2. The matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs.

3. Plaintiff is a minor and is a citizen of the State of Alabama, and brings this action through his next friend, GEORGE COBB.

4. Plaintiff also brings this action pursuant to Rule 23(a) of the Federal Rules of Civil Procedure for himself on behalf of all other Negroes similarly situated, whose numbers make it impracticable to bring them all before the Court,

he seeks common relief based upon common questions of law and fact.

5. The Plaintiff, ROBERT L. COBB, a Minor, by and through his next friend, GEORGE COBB, says:

a) He is a citizen of the United States and resides in Montgomery County, Alabama.

6. Plaintiff belongs to that class of persons commonly referred to and designated as Negroes.

7. a) Defendant, MONTGOMERY LIBRARY BOARD, was created and exists under the laws of the State of Alabama for the purpose of exercising general control and supervision, inter alia, of the MONTGOMERY PUBLIC LIBRARY.

b) The Defendant, EARL D. JAMES, is Mayor and resident of the City of Montgomery, and member ex-officio of the Montgomery Library Board, and The Montgomery Museum of Fine Arts Board of Trustees.

c) The Defendant, L. B. SULLIVAN, is the Police Commissioner and resident of the City of Montgomery, and is member ex-officio of the Montgomery Library Board, and The Montgomery Museum of Fine Arts Board of Trustees.

d) The Defendant, FRANK W. PARKS, is Commissioner of Public Affairs and resident of the City of Montgomery, and is member ex-officio of the Montgomery Library Board, and The Montgomery Museum of Fine Arts Board of Trustees.

e) The Defendant, W. E. GOODWIN, is a citizen of the United States over the age of 21, a resident of the City of Montgomery and is Chairman of the Montgomery Library Board.

f) The Defendant, FERRIS J. MARTIN, JR., is a citizen of the United States, over the age of 21, a resident of the City of Montgomery and was appointed as the Library-Director of the Montgomery Public Library, by the defendant, MONTGOMERY LIBRARY BOARD.

g) The Defendant, MONTGOMERY MUSEUM OF FINE ARTS BOARD OF TRUSTEES, was created and exists under the laws of the State of Alabama for the purpose of exercising general control and supervision, inter alia, of the MONTGOMERY MUSEUM OF FINE ARTS.

h) The Defendant, MRS. WILLIAM MAHONEY, is a citizen of the United States over the age of 21, a resident of the City of Montgomery and is President of the Montgomery Museum of Fine Arts Board of Trustees.

i) The Defendant, DONALD A. WINER, is a citizen of the United States, over the age of 21, a resident of the City of Montgomery and is Director of the Montgomery Museum of Fine Arts, and was appointed by the defendant, MONTGOMERY MUSEUM OF FINE ARTS BOARD OF TRUSTEES.

8. Each of the above named defendants is being sued in his individual and official capacities.

9. This is a suit of a civil nature to redress the deprivation under color of state law, statutes, ordinances, regulations, custom or usage of rights, privileges and immunities secured by the Constitution of the United States and by Acts of Congress providing for equal rights of citizens and all persons within the jurisdiction of the United States.

10. On Thursday, March 15, 1962, Plaintiff sought to use the library facilities of the Montgomery Public Library, located at 445 South Lawrence Street, Montgomery, Alabama, but was told that he was not free to use the main library because of a city ordinance, custom, practice and usage, which prohibits Negroes from using such facilities. The Defendant, FERRIS J. MARTIN, JR., of the Montgomery Public Library then ordered plaintiff out of the building after having a private conference with him in his office. The Director of the Library advised plaintiff that the Cleveland Avenue Branch Library was reserved for the use of Negroes, and stated that any book or books, which he desired would be sent to the Cleveland Avenue Branch promptly; that unless he left the building and grounds he would be required to call the City police, since his orders were not to permit Negroes to use the facilities at 445 South Lawrence Street, under any conditions.

11. Expulsion of the plaintiff from the Public Library was followed up by a phone call to the Montgomery City Police Department. Before the police arrived, the plaintiff had left peaceably and

and without any disturbance from other persons using the library. The explusion of the plaintiff from the Montgomery Public Library because he was a member of the Negro race had the practical effect of deterring and prohibiting the plaintiff, and all others similarly situated from exercising rights guaranteed to them by the laws and Constitution of the United States.

12. On the 15th of March, 1962, an officer or employee of the Montgomery Museum of Fine Arts, whose identity is unknown, informed the plaintiff that the Museum was not opened and that the facilities of the Museum were not available to the plaintiff and directed that he must leave the museum building.

13. On or about March 23, 1962, acting under color of law and in furtherance of a policy denying to plaintiff and other Negro citizens of Montgomery, the right to use the public facilities of the Montgomery Museum of Fine Arts, the defendants sent a "Museum News" letter to members of the Montgomery Museum Association, stating, inter alia, that a meeting was called for April 4, 1962, at the Montgomery Museum of Fine Arts Building to consider amending, Article III, Section 1 of the Constitution to read as follows:

> "Any white person of good moral character may become a member on the recommendation of a member in good standing, subject to approval of the Executive Board of Trustees" (sic)

14. Plaintiff alleges on information and belief that the Montgomery Museum of Fine Arts Building as well as the Montgomery Public Library Building were constructed by the City of Montgomery, Alabama, and are operated by public funds provided by the City for the use of the general public, except Negro citizens.

15. Requiring plaintiff and other Negroes similarly situated to use only segregated library facilities, deny to them rights guaranteed by the laws of the United States and the equal privileges and immunities clause, and the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

16. Plaintiff alleges on information and belief that the proposed constitutional amendment referred to in paragraph 13, was

adopted on April 4, 1962, in violation of rights and privileges of plaintiff herein and other Negroes similarly situated, which are protected by the Constitution of the United States.

17. That plaintiff has been informed and upon such information does believe that the defendant, LIBRARY BOARD, or several of its members have decided to close the Cleveland Avenue Branch Library, if an order from this Court is sought by any Negro citizen to use the Montgomery Public Library on a non-segregated basis, located at 445 South Lawrence Street.

18. That the defendants, or their successors in office, unless prevented by this Honorable Court, will continue to violate the constitutional and statutory right of plaintiff's class as they and their predecessors in office have violated plaintiff's rights for many years next preceeding the filing of this Complaint. The rights of plaintiff and all others similarly situated, can be protected only by a decree of this Court declaring any ordinance, practice, custom and usage of refusing to allow Negro citizens to use public facilities, including the Montgomery Public Library and the Montgomery Museum of Fine Arts and all facilities therein, including, to-wit, toilets or wash-rooms, to be unconstitutional and in violation of rights and privileges which are guaranteed by the Fourteenth Amendment to the Constitution of the United States.

WHEREFORE, plaintiff and those similarly situated, respectfully prays that this Court grant the following relief:

a) That an order be granted pendente lite that the defendants, each and every one of them, their agents, servants, employees, attorneys, and all persons in active concert and participating with them, be restrained and enjoined from making or enforcing any distinction whatsoever based upon race or color in regard to the utilization of the services and facilities of any branch of the Montgomery Public Library as well as the Montgomery Museum of Fine Arts or from closing the Cleveland Avenue Branch Library should this temporary order be granted;

b) That a permanent injunction be granted restraining the defendants, each and every one of them, their agents, servants, employees, attorneys and all persons in active concert and participation with them from maintaining a library system segregated by reason of race or color or a Museum of Fine Arts segregated by reason of race or color in the City of Montgomery, Alabama, or from enforcing in any manner,. any statute, ordinance, custom or usage which enacts or provides for such racial segregation of public facilities under color of law;

c) That a declaratory judgment be entered, holding and declaring by this Court that any statute, ordinance, custom or usage which provides for or enforces segregation of the Negro race in the library system of the City of Montgomery, Alabama, or deprives said race of the use of the Museum of Fine Arts, be declared null and void as violative of the laws and the Constitution of the United States of America, and the decisions of the Supreme Court of the United States, all of which are by mandate of the Constitution of the United States.

d) That a declaratory judgment be entered holding and declaring by this Court that any amendment proposed or already enacted to the Constitution of the Montgomery Museum of Fine Arts which would restrict membership to white persons alone, as null and void as violative of the Constitution of the United States of America, the laws of the United States of America, and the decisions of the Supreme Court of the United States.

And for any further relief as to this Honorable Court may appear appropriate.

Respectfully submitted,

Charles S. Conley

CHARLES S. CONLEY
ATTORNEY FOR PLAINTIFF
Office and P. O. Address
530 South Union Street
Montgomery 4, Alabama

STATE OF ALABAMA)
) ss.:
MONTGOMERY COUNTY)

ROBERT L. COBB, a minor, by and through his next friend, GEORGE COBB, being duly sworn, according to law upon his oath, deposes and says:

That he is the plaintiff herein; that he has read the foregoing and knows the contents thereof, and that the same are true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

George Cobb
GEORGE COBB

Sworn to and subscribed before me
this 27th day of APRIL, 1962.

Calvin C. Pryor
CALVIN C. PRYOR
NOTARY PUBLIC - STATE OF ALABAMA AT LARGE

[illegible] v. RAINEY, et al. JACKSON, MISSISSIPPI 1964
(CIVIL RIGHTS MURDERS)

Please Retain Original Order

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

COUNCIL OF FEDERATED ORGANIZATIONS; MRS. RITA SCHWERNER, and MRS. FANNIE LEE CHANEY, individually and on behalf of MICHAEL SCHWERNER and JAMES CHANEY; MRS. FANNIE LOU HAMER, MRS. PEGGY JEAN CONNOR, MRS. MARY ROBINSON and JOHN [illegible] GOULD, SR., individually and on behalf of others similarly situated; ROBERT P. MOSES, R. HUNTER MOREY, RUTH SCHEIN and DORIE LADNER, individually and on behalf of others similarly situated; the REV. R. EDWIN KING, individually and on behalf of others similarly situated; NATHAN HAUSFATHER, EDITH HAUSFATHER, GLENN TRIMBLE and ELEANOR TRIMBLE, individually and on behalf of others similarly situated,

Plaintiffs,

JACKSON DIVISION
CIVIL ACTION
NO. _____

versus

L. C. RAINEY and CECIL PRICE, individually and as Sheriff and Deputy Sheriff of Neshoba County, Mississippi, and as representative of the Sheriffs and Deputy Sheriffs of the 82 Counties of Mississippi; T. B. BIRDSONG, individually and as Commissioner of Public Safety in charge of the Mississippi State Highway Patrol, and as representative of the members of the Mississippi State Highway Patrol; KU KLUX KLAN, an association with members in the State of Mississippi; AMERICANS FOR THE PRESERVATION OF THE WHITE RACE, an association with members in the State of Mississippi; WHITE CITIZENS COUNCILS OF MISSISSIPPI, an association with members in the State of Mississippi; JOHN DOE and RICHARD ROE, and others whose identity is presently to the plaintiffs unknown, members of state and local law enforcement agencies in Mississippi, and members of KU KLUX KLAN and/or AMERICANS FOR THE PRESERVATION OF THE WHITE RACE, and/or WHITE CITIZENS COUNCILS OF MISSISSIPPI, and JOHN SMITH and PAUL JONES, and others whose identity is presently to the plaintiffs unknown, private white citizens of the State of Mississippi.

Defendants.

COMPLAINT

Plaintiffs, for their verified complaint, say:

PARTIES:

A. Plaintiffs:

1. Plaintiff, COUNCIL OF FEDERATED ORGANIZATIONS, hereinafter referred to as "COFO," is a coordinated organization of all civil-rights organizations in the State of Mississippi. It is dedicated to the achievement, through lawful and constitutional means, of the freedom and equality of Negro citizens of the State of Mississippi guaranteed to them by the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States. Plaintiff COFO sues for itself and on behalf of all of its constituent affiliates and cooperating organizations and on behalf of all citizens of the United States, Negro and white, in the State of Mississippi who are endeavoring to assist in its program of activities designed to achieve the full rights of American citizenship for the Negro citizens of Mississippi, including the right to vote and to participate equally in the processes of political democracy guaranteed to them by the Constitution of the United States.

2. Plaintiff MRS. RITA SCHWERNER is a citizen of the United States. Plaintiff MRS. FANNIE LEE CHANEY is a citizen of the United States. MRS. SCHWERNER sues individually and on behalf of her husband, MICHAEL SCHWERNER, and MRS. CHANEY sues individually and on behalf of her son, JAMES CHANEY, both citizens of the United States, and presently unable to assert their rights under the Constitution of the United States by reason of the wrongful actions of the defendants, or some of them, acting in unlawful conspiracy with each other and other persons presently to the plaintiffs unknown.

3. MRS. FANNIE LOU HAMER, MRS. PEGGY JEAN CONNOR, MRS. MARY ROBINSON, and JOHN GOULD, SR. are citizens of the United States and residents of the State of Mississippi. Plaintiff Hamer resides in Sunflower County, Mississippi; plaintiff Connor resides in Forrest County, Mississippi; plaintiff Robinson resides in Madison County, Mississippi; plaintiff Gould resides in Forrest County, Mississippi. They are members of the Negro race. They sue individually and on behalf of all Negro citizens of the State of Mississippi, which class is too numerous to bring before the Court.

4. Plaintiff ROBERT P. MOSES, R. HUNTER MOREY, RUTH SCHEIN and DORIE LADNER are citizens of the United States. Plaintiff Moses and plaintiff Ladner are members of the Negro race and plaintiff

Morey and plaintiff Schein are white. Plaintiff Moses is a resident of the State of Mississippi and is program director for plaintiff COFO. He is director of the Summer Project of plaintiff COFO. Plaintiffs Moses, Morey, Schein and Ladner are staff and volunteer workers, approximately 1,000 in number, participating in the lawful, constitutional activities of the Mississippi Summer Project of plaintiff COFO. They have volunteered to assist, through lawful and constitutional means, the efforts of the Negro citizens of the State of Mississippi to achieve equality, freedom and the right to vote, which rights are guaranteed by the Constitution of the United States and presently denied to the Negro citizens of that state by the authorities of the state in open defiance of the Constitution of the United States and the law of the land. Plaintiffs Moses, Morey, Schein and Ladner sue individually and on behalf of all other staff and volunteer workers, Negro and white, similarly situated throughout the State of Mississippi, which class is too numerous to bring before the Court.

5. Plaintiff REVEREND R. EDWIN KING is a citizen of the United States and a resident of the State of Mississippi. He is a white citizen and is actively concerned with assisting the efforts of the Negro citizens of this state to achieve freedom, equality and the right to vote. He sues individually and on behalf of all other white citizens of Mississippi similarly situated.

6. NATHAN HAUSFATHER, EDITH HAUSFATHER, GLENN TRIMBLE and ELEANOR TRIMBLE are citizens of the United States. They are parents of young staff and volunteer workers presently assisting in the lawful and constitutional activities of the Mississippi Summer Project of plaintiff COFO. They sue individually and on behalf of all other parents of such volunteer and staff workers similarly situated.

B. Defendants:

7. Defendant L. C. RAINEY is the Sheriff of Neshoba County, Mississippi. He is a citizen of the United States and a resident of Philadelphia, Mississippi. Defendant CECIL PRICE is the Deputy Sheriff of Neshoba County, Mississippi. He is a citizen of the United States and a resident of Philadelphia, Mississippi. They are sued individually and as representative of each and every one of the sheriffs and deputy sheriffs of the 82 counties of the State

of Mississippi. This class is too numerous to bring them all before the Court.

8. Defendant T. B. BIRDSONG is the Commissioner of Public Safety of the State of Mississippi and in charge of the Mississippi State Highway Patrol. He is a citizen of the United States and a resident of the State of Mississippi. He is sued individually and as representative of all of the members of the Mississippi State Highway Patrol, which class is too numerous to bring before the Court.

9. Defendant KU KLUX KLAN is an association with members in Neshoba County, Mississippi, Lauderdale County, Mississippi and, on information and belief, in each of the 82 counties of the State of Mississippi. On information and belief it is a clandestine, terroristic organization whose members are committed to the use of force, violence and terroristic acts to deter, punish and intimidate all American citizens, Negro and white, who seek to utilize constitutional means to obtain equality, freedom and the right to vote for the Negro citizens of the State of Mississippi.

10. Defendant AMERICANS FOR THE PRESERVATION OF THE WHITE RACE is an association with members in Neshoba County, Mississippi, Lauderdale County, Mississippi, and, on information and belief, with members in many of the 82 counties of the State of Mississippi. On information and belief it is a clandestine, terroristic organization whose members are committed to the use of force, violence and terroristic acts to deter, punish and intimidate all American citizens, Negro and white, who seek to utilize constitutional means to obtain equality, freedom and the right to vote for the Negro citizens of the State of Mississippi.

11. Defendant WHITE CITIZENS COUNCILS OF MISSISSIPPI is an association with members throughout the State of Mississippi. It is an organization dedicated to impeding and deterring by all means the lawful efforts of Negro citizens of Mississippi to achieve the federal constitutional objectives of freedom, equality and the right to vote.

12. Defendant JOHN DOE and RICHARD ROE are members of the State Police of the State of Mississippi and/or the State Highway Patrol of the State of Mississippi, and/or the Sheriff's offices of the various counties of the State of Mississippi, and/or the local police

forces in the towns and municipalities throughout the State of Mississippi, and/or the auxiliary police organizations and other public or quasi-public law enforcement organizations residing both in Neshoba and Lauderdale Counties and throughout the State of Mississippi. On information and belief they are members of defendant KU KLUX KLAN and/or defendant AMERICANS FOR THE PRESERVATION OF THE WHITE RACE and/or defendant WHITE CITIZENS COUNCILS.

13. Defendants JOHN SMITH and PAUL JONES, whose true names are unknown to plaintiffs, are private white citizens of the State of Mississippi who, on information and belief, are either not members of the defendants KU KLUX KLAN, AMERICANS FOR THE PRESERVATION OF THE WHITE RACE or WHITE CITIZENS COUNCILS or, if so, are not acting in such capacity, but who are committed to the use of force, violence and terroristic acts to deter, punish and intimidate all American citizens, Negro and white, who seek to utilize constitutional means to obtain equality, freedom and the right to vote for the Negro citizens of the State of Mississippi.

Jurisdiction

14. The jurisdiction of this Court arises under the Constitution of the United States and, in particular, under Article IV thereof, and the First, Thirteenth, Fourteenth and Fifteenth Amendments thereto, and under the laws of the United States and, in particular, Title 28, U.S.C., Sections 1331, 1343 and Title 42 U.S.C., Sections 1971, 1981, 1983, 1985, 1988 and 1989, as well as under the Civil Rights Act of 1964.

Cause of Action

15. The defendants, together with numerous persons presently to the plaintiffs unknown, for many years up to and including the present date, have combined and conspired under color of statutes, ordinances, regulations, customs and usages of the State of Mississippi to subject or cause to subject the plaintiffs, being citizens of the United States, to the deprivation of rights, privileges and immunities secured by the Constitution and laws of the United States.

16. Furthermore, the defendants, together with numerous persons presently to the plaintiffs unknown, for many years up to and including the present date, have combined and conspired for the purpose of depriving the plaintiffs and the classes of persons they represent,

of the equal protection of the laws and of equal privileges and immunities under the law, including their right to register and vote in elections for, among others, the President, Vice-President and members of Congress, and for the purpose of preventing, persuading, hindering or subverting the constituted authorities of the State of Mississippi from giving and securing to all persons within the State of Mississippi the equal protection of the laws.

17. Pursuant to this conspiracy, the defendants, for many years up to and including the present day, have planned and conspired to, and did in fact, utilize illegal force, violence and terroristic acts to intimidate and deter the Negro citizens of the State of Mississippi from exercising their constitutional rights to associate together in efforts to achieve the constitutional objectives of freedom and equality as American citizens and the fundamental right to register and vote guaranteed under the Constitution of the United States to all American citizens regardless of race or color.

Pursuant thereto, the defendants, or some of them, including defendants acting under the color and authority of the State of Mississippi, have engaged in widespread terroristic acts including beatings, arson, torture and murder in a concerted effort to intimidate, punish and deter the Negro citizens of the State of Mississippi as well as any white persons who have dared to assist them in their efforts to achieve the federal constitutional objectives of freedom, equality and the right to register and vote regardless of race and color. This concerted, planned and organized conspiracy to utilize these terroristic acts of violence has continued and accelerated up to and including the present date. The existence of this concerted plan to utilize acts of violence has been reported by agencies of the United States government and by personal representatives of the President of the United States and is well-known throughout the State of Mississippi.

18. Prior to 1955, Negroes in most rural communities and in many urban communities of Mississippi did not offer themselves as voters and did not seek to register or participate actively in political life in Mississippi because of the accepted pattern of life in Mississippi reinforced by the terroristic acts of these defendants. Beginning shortly after 1954, in part as a result of the decision of the Supreme Court of the United States in Brown v.

Board of Education, the Negro citizens of Mississippi began efforts to participate in the political processes of the state. In response to this development from 1955 until the present time, various members of the executive and legislative branches of the government of the State of Mississippi, who controlled and dominated the same, have engaged in numerous attempts, through legislation and otherwise, to bar or greatly limit any increase in Negro participation in the political life of Mississippi. Similarly these defendants and others acting in concert with them have intensified their conspiracy to utilize force, violence and terroristic acts to intimidate and deter the Negro citizens of Mississippi from exercising their rights of American citizenship. Nevertheless, the Negro citizens of this State have courageously continued their efforts to participate in the democratic processes of government, and this summer plaintiff COFO has organized a Summer Project consisting of many hundreds of young American citizens, Negro and white, who have volunteered their services to assist the Negro citizens of Mississippi in their efforts to register to vote and to exercise their fundamental rights of citizenship guaranteed by the Constitution of the United States. At some date recently, the defendants, or some of them, met, planned and conspired to accelerate and intensify their terroristic acts of force and violence in an attempt to deter the plaintiffs, including the Negro citizens of Mississippi, from carrying through to its conclusion this lawful and constitutionally protected Summer Project. Accordingly, pursuant to the aforesaid conspiracy, the defendants, together with others presently unknown to plaintiffs, have recently planned and conspired to utilize illegal force, violence and terroristic acts to intimidate and deter these young American citizens, Negro and white, who have volunteered their services this summer through the Summer Project of plaintiff COFO, to assist the Negro citizens of the State of Mississippi in achieving their constitutionally promised and secured objectives of freedom, equality and the right to register and vote, regardless of race or color.

19. Furthermore, the defendants, together with numerous persons presently to the plaintiffs unknown, have recently planned and conspired to utilize these acts of violence in an effort to deter these volunteer workers, together with the Negro citizens of the State of Mississippi, from exercising their fundamental, federally protected

constitutional rights of free speech, free press, freedom of assembly and of association and the right to petition their government for redress of grievances, all of which rights are guaranteed to these volunteer workers and to the Negro citizens of the State of Mississippi under the First Amendment to the Constitution of the United States. In open defiance of the Constitution of the United States and of the laws of the United States, these defendants, with numerous persons presently to the plaintiffs unknown, have conspired to organize and set up clandestine terroristic organizations throughout the various counties of the State of Mississippi for the purpose of planning, preparing and carrying out illegal terroristic acts of violence against the plaintiffs and all citizens, Negro and white, in the State of Mississippi who are presently attempting to utilize their federally protected rights to achieve their federally protected goal of freedom, equality and the right to vote.

20. Plaintiffs further state that pursuant to the intensification of this continuing conspiracy and as an overt act thereof, the defendants, or some of them, together with persons presently to the plaintiffs unknown, did, on the evening of June 19, 1964, conspire, plan and did, in fact, go secretly and in disguise upon the highways of Neshoba County, Mississippi, and with force and violence and the use of armed weapons did brutally and with malice aforethought and without any justification whatsoever, beat and inflict serious injuries upon several Negro citizens of Neshoba County, and did then and there burn to the ground a Negro house of worship, all of which illegal and terroristic acts were solely for the purpose of intimidating and deterring these Negro citizens and the Negro citizens of Neshoba County from exercising any of their fundamental rights under the Constitution of the United States. This terroristic act committed by the defendants or some of them, and others presently to the plaintiffs unknown, was in open defiance and violation of the Constitution and laws of the United States.

21. Plaintiffs further allege that in pursuance of this conspiracy and as an overt act thereof, the defendants, or some of them, together with persons presently to the plaintiffs unknown, did, on the evening of June 21st, 1964, conspire, plan and, in fact, did, under color of the laws of the State of Mississippi, contrive without lawful reason or warrant of law to arrest three young persons,

volunteer and staff workers in the Summer Project of plaintiff COFO, namely MICHAEL SCHWERNER, ANDREW GOODMAN, and JAMES CHANEY, being members of the classes of plaintiffs herein, solely and exclusively because they were engaged in peaceful and lawful activities seeking to implement the guarantees of the Constitution of the United States. The defendants or some of them, acting with others presently to the plaintiffs unknown, thereupon did plan and conspire and did, in fact, utilize this illegal and unwarranted arrest and detention under color of the laws of Mississippi, to contrive, plan and bring about the illegal seizure of MICHAEL SCHWERNER, ANDREW GOODMAN and JAMES CHANEY. Pursuant to this plan and conspiracy the defendants, or some of them, together with persons presently to the plaintiffs unknown, continued to hold MICHAEL SCHWERNER, ANDREW GOODMAN and JAMES CHANEY forcibly and secretly in their custody and control, against their will. On information and belief the defendants or some of them, together with persons presently to the plaintiffs unknown, conspired to utilize force and violence to remove the said MICHAEL SCHWERNER, ANDREW GOODMAN and JAMES CHANEY from the jailhouse in Philadelphia, Mississippi, and to cause other illegal forcible action to be taken against them, the precise nature of which is presently unknown to the plaintiffs.

These terroristic acts were for the sole purpose of attempting to deter, punish and impede these young American citizens, the Negro citizens of Neshoba County, Mississippi, and throughout the state, as well as the volunteer and staff workers of the Mississippi Summer Project of plaintiff COFO, and all of the plaintiffs in this action, from continuing to exercise their fundamental rights as American citizens to freedom of speech, press, assembly and association in their lawful efforts to implement and enforce the federal constitutional guarantees of equality, freedom, and the right to vote.

22. The defendants and others presently to the plaintiffs unknown, continue to conspire to utilize force, violence and terroristic acts to impede, deter, frighten and harass the plaintiffs and the classes they represent from exercising their fundamental rights under the First, Thirteenth, Fourteenth and Fifteenth Amendments. Unless this illegal conspiracy is restrained by this Court and proper relief granted, the plaintiffs will imminently suffer immediate and

irreparable injuries and continue to suffer immediate and irreparable injuries.

Remedies

23. There is no adequate remedy at law either in the state courts of Mississippi or the federal courts. The immediate invocation of the powers of a federal court of equity are urgently required to protect fundamental federal constitutional rights, privileges and immunities from immediate and irreparable injury.

24. Furthermore, this Court has authority and is required under the facts here set forth in this complaint, to take immediate action pursuant to Title 42 U.S.C. s.1989 to implement and enforce equitable relief against the imminently threatened acts of the conspirators here charged. Title 42 U.S.C. s.1989 provides as follows:

> S. 1989 Commissioners; appointment of persons to execute warrants
>
> The district courts of the United States and the district courts of the Territories, from time to time, shall increase the number of commissioners, so as to afford a speedy and convenient means for the arrest and examination of persons charged with the crimes referred to in section 1987 of this title; and such commissioners are authorized and required to exercise all the powers and duties conferred on them herein with regard to such offenses in like manner as they are authorized by law to exercise with regard to other offenses against the laws of the United States. Said commissioners are empowered, within their respective counties, to appoint, in writing, under their hands, one or more suitable persons, from time to time, who shall execute all such warrants or other process as the commissioners may issue in the lawful performance of their duties, and the persons so appointed shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged; and such warrants shall run and be executed anywhere in the State or Territory within which they are issued. R.S. Sections 1983, 1984; Mar. 3, 1911, c. 231 2 291, 36 Stat. 1167.

The facts set forth in this complaint revealing a widespread conspiracy between clandestine terroristic organizations, and members and officers of state and local law enforcement agencies for the purpose of terrorizing, punishing, intimidating and deterring Negro citizens from exercising federally protected rights of citizenship are identical to those contemplated by the Congress of the United States in enacting Title 42 U.S.C., Section 1989. This statute places upon the federal judiciary a duty and responsibility to enforce the laws prohibiting crimes against the exercise of the elective franchise and the civil rights of citizens as set forth in

Title 42 U.S.C., Section 1987, under circumstances as here revealed. This duty, prescribed by the Congress, is supplementary to, and in no way a substitute for, the duties and responsibilities of the Executive Branch of the Government to enforce these laws and to protect the exercise of fundamental rights of citizenship, and the Legislative Branch of the Government to investigate the need for new legislation in the area of civil rights and, where necessary, to enact the same.

Accordingly, the facts set forth herein require that this Court shall forthwith order the increase of the number of United States Commissioners with such appointed deputies as may be required, with the power to arrest as provided by law any persons threatening to violate the orders of this Court or any of the laws of the United States protecting the civil rights of citizens of the United States and the elective franchise, and that these emergency United States Commissioners or their deputies be ordered to be stationed at all times in every Sheriff's office in the State of Mississippi in every one of the 82 counties of Mississippi, as well as in all such other places as their presence may be required to enforce obedience to the orders of this Court and to the laws of the United States protecting the civil rights of citizens and the elective franchise.

25. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE plaintiffs pray:

1. That a permanent and temporary injunction issue enjoining and restraining the defendants, each of them, their agents and representatives, and all others acting in concert with them, from in any way conspiring to utilize or in any way utilizing force, violence or any terroristic act in attempts to deter, impede or punish the plaintiffs and all classes of citizens they represent from exercising their rights, privileges and immunities as citizens of the United States.

2. That during the pendency of such injunctive decrees, pursuant to Title 42 U.S.C. 1989,

(a) an order issue ordering and directing the increase of the number of United States Commissioners in the State of Mississippi and ordering and directing that a United States Commissioner or

Deputy Commissioner with full powers of arrest pursuaunt to law, be assigned and stationed in each and every office of Sheriff in the 82 counties of Mississippi;

(b) and that said special United States Commissionets be directed as provided by law to protect the lawful civil rights and elective franchise activities of citizens of the United States and to provide for the speedy arrest of any persons in the State of Mississippi engaged or threatening to engage in activities in violation of the laws of the United States which protect the civil rights of citizens and the elective franchise; and that

(c) pursuant to Title 42 U.S.C. 1989, the said special United States Commissioners be ordered and directed to appoint in writing one or more suitable persons who shall be required to serve and execute any such warrants of arrest; and that

(d) wherever required to afford reasonable protection to all persons in their constitutional rights of equality and the exercise of the elective franchise, the said special United States Commissioners or their deputies be temporarily assigned to be stationed in any public buildings or other places throughout the State of Mississippi where their presence may be required; and that

(e) the said special United States Commissioners be ordered to report to this Court at regular intervals any and all incidents of violation of the orders of this Court and any and all arrests, pursuant to Title 42 U.S.C. 1989, for activities of the defendants or others acting in concert with them for violations of laws of the United States protecting the civil rights of citizens and the elective franchise.

3. And for such other and further relief as may be proper and may be prayed for by the plaintiffs as the situation may urgently require.

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U.S. VS. PFISTER, JAMES, H.J.D. (NEW ORLEANS, LOUISIANA
CIVIL RIGHTS MARCHES)

Please Retain Original Order

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

JAMES A. DOMBROWSKI, et al

v. CIVIL ACTION NO. 14019 B

JAMES H. PFISTER, et als

A F F I D A V I T

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned authority, duly qualified and commissioned in and for the Parish and State first above written,

PERSONALLY CAME AND APPEARED:

DR. JAMES A. DOMBROWSKI

who, after being first duly sworn, declared and said:

That he is a graduate of Union Theological Seminary in New York City and has served as an instructor at that institution;

That he has served as the executive director of Southern Conference Educational Fund, Inc. and Southern Conference for Human Welfare, its predecessor organization, since 1942. His sole interest in political action is the elimination of segregation and all forms of discrimination based on race in the South through education and other non-violent methods. That his aims and purposes are identical to the expressed aims and purposes of Southern Conference Educational Fund.

That he is, and for many years has been, actively engaged in directing the attempts of SCEF to accomplish its

purpose and assisting in its functions directed toward that end, including the sponsoring of integrated conferences bringing together southerners of similar purpose to exchange information on how to end segregation and discrimination, the publishing of a monthly journal, THE SOUTHERN PATRIOT, which reports activities and aspirations of people in organizations working for integration, the printing and distribution of brochures, papers and reports on the various aspects of segregated living with suggestions for action to eliminate it, stimulation of local and state groups designed to combat segregation by direct action or political action, or both, operating a news service which provides information on integrationist activities to approximately 200 publications throughout the nation, providing funds for test cases to establish rights of minority, and engaging in campaigns to inform people of their rights of free speech, assembly and petition under the 1st Amendment of the U. S. Constitution.

That affiant's employment as managing director of SCEF is on a full-time basis and is one to which affiant is devoted to the exclusion of all other political interest or activity.

That the chief weapon of the SCEF is the use of the press and speech as means of mass communication for dissemination of ideas including the printing and distribution of literature and TV and radio appeals. The effectiveness of SCEF requires the active participation of thousands of persons of good standing in their community throughout the country, particularly in the south, as well as the financial contributions of thousands of other persons who do not particpate actively in the programs of the organization.

~~That~~ On October 4, 1963, officers of the New Orleans Police Department and Louisiana State Police Department forcibly entered the office of the Southern Conference Educational Fund, Inc. at 822 Perdido Street in the City of New Orleans. There were approximately 13 officers participating in the raid, including F. B. Alexander, Jr., the Staff Director of the Joint Legislative Committee on Un-American Activities for the State of Louisiana. The raid began at about 3:00 P.M., at which time a large moving van was driven to the entrance of the SCEF office accompanied by squad cars. Approximately twenty trustees from the House of Detention of the City of New Orleans were utilized in ransacking the office and in removing from the office practically all books, records, literature, correspondence, files, lists and all other documents, articles and objects located in the office. A description of part of the property seized is as follows:

1. A four-drawer iron file, letter-size, containing all of the corporation correspondence relating to finance, board of directors (about 100 individual file folders of board members); taxes-federal and state, including old tax returns; meetings of the board; certain corporate certificates registered in the name of the corporation; about $100 in postage stamps (estimated); etc.; about 30 checks, est. total $300.
2. A four-drawer iron file similar to the one listed above containing correspondence with individuals, staff members, organizations; material on special projects sponsored by the Fund.
3. A four-drawer, wooden file, letter-size, containing a file

of clippings on integration, some corporation correspondence on current projects; personal papers of James A. Dombrowski including a folder with certain corporate certificates.

4. Several transfer files containing corporate records and correspondence. Number of files not certain, perhaps four to six.

5. Wooden library index file containing about 16 to 20 thousand 3x5 cards.

6. Library of about 1,500 to 2,000 (est.) books and pamphlets, primarily on integration but including many books from affiant's personal library on literature, philosophy, religion, sociology, etc.

7. Contents of affiant's desk, as well as the contents of two additional desks and everything on a large work table. From affiant's desk, his personal check book containing some checks drawn to his name, all of his personal bank statements and other personal property.

8. Financial records of the corporation including cash book, ledger, journal, auditors' reports, cancelled checks and bank statements.

9. A file of the SOUTHERN PATRIOT for 21 years.

10. Photographs illustrating the southern integration movement over a period of about 20 years, largely from the SOUTHERN PATRIOT file.

11. Pictures from affiant's office wall, including a photograph inscribed to him by Mrs. Eleanor Roosevelt, a letter from Franklin D. Roosevelt to Dr. Frank Graham, president of the Southern Conference for Human Welfare;

a letter to affiant from Albert Einstein; a photograph inscribed to him from Mrs. Mary McLeod Bethune; photograph inscribed of Aubrey W. Williams and friend; a framed award to the SOUTHERN PATRIOT by the school of Journalism of Lincoln University;

12. Three posters from affiant's office wall: one a full page ad from an Atlanta paper by the Committee on Appeal for Human Rights; a poster in color WE SHALL OVERCOME from the March on Washington for Jobs & Freedom; and a full page ad from the NEW YORK TIMES entitled LOVE, THE GREATEST THING IN THE WORLD.

13. Contents of a storeroom including records, several thousand sheets of blank stationery, letterheads, bond paper, etc., probably 5 to 10 thousand blank receipts, numbered and printed in duplicate and triplicate, also various forms; probably 5M to 10M pamphlets, brochures, etc.

14. Mailing list of THE SOUTHERN PATRIOT, about 10,000 names.

~~That~~ in ~~addition~~, ~~some~~ of the officers proceeded to ~~affiant's~~ home ~~at~~ 715 Governor Nichols Street and proceeded to search the ~~same~~ and to seize many items, including affiant's wife's personal check book, certain checks payable to her, books, address books, blank stationery, portfolio, and that the ~~said~~ officers then proceeded to search his personal automobile located nearby and removed therefrom a single volume ~~to-wit~~: Henry David Thoreau's Journal, and a notebook containing some personal reflections on same.

That ~~affiant~~ was thereupon placed under arrest and booked with the violation of the Louisiana Statutes concerning subversive activity and communist control. No formal charges were ever brought but on October 25, 1963, a preliminary

hearing was held in Section E of the Criminal District Court for the Parish of Orleans in No. 181-975 of that Court, ~~and that~~ after hearing evidence, the Court discharged ~~affiant~~ from the arrest status on grounds that the arrest warrant was improvidently issued and that there ~~is~~ no reasonable cause for the arrest.

~~That~~ Immediately subsequent to this hearing there ~~have been~~ many public statements made by Representative James H. Pfister and by Jack Rogers, Counsel for the Joint Legislative Committee, concerning the intentions of the committee to hold legislative hearings in Baton Rouge and to seek criminal charges against ~~affiant~~ and others for alleged violation of the above mentioned statutes.

~~That~~ On November 15, 1963, it was reported in the public press and via radio and television that the Criminal District Court had charged the Orleans Parish Grand Jury with responsibility for investigating violations of the above mentioned statutes. ~~That~~ On the Court's instructions the Orleans Parish Grand Jury had subpoenaed copies of the confiscated records of the Southern Conference Educational Fund. That it was the stated intention of counsel for the Joint Legislative Committee to appear before the Orleans Parish Grand Jury on Thursday, November 21, 1963, to present alleged evidence against affiant and others for the purpose of securing indictment against them. ~~That~~ On about November 8 the Joint Legislative Committee on Un-American Activities met in Baton Rouge and adopted a resolution, widely reported in the public press, branding SCEF as a communist front organization, and calling upon the Orleans Parish District Attorney to take prosecutive action against ~~affiant~~ and others.

That affiant is guilty of no crime or any violation of Louisiana Law, including the above mentioned statutes. That the various documents, pamphlets, literature etc. seized on October 4th are not contraband, but that despite this fact they have never been returned to SCEF or to affiant. The mere lodging of a criminal charge or indictment against affiant or other officers of SCEF, however, could as effectively thwart the purposes of SCEF, as could a criminal trial and conviction.

That affiant knows from his experience of many years as managing director of SCEF that there is a general reluctance on the part of a very large portion of the contributors and active participants of both white and Negro races to be identified with the civil rights movement because of the fear of being called communists or subversive, or fear of being linked with a group so labeled regardless of the merit or lack of merit of such allegation. The fear of such charges or allegations, regardless of their lack of basis in fact, effectively deters many who would otherwise be disposed to participate. That a large portion of the contributors to SCEF, particularly in the South, do not want and do not intend that their names should be used or utilized in any manner. They expect the fact of their contribution or association with the organization to remain confidential due to the unpopularity of the cause espoused by SCEF in their communities. They fear general ill will and possible economic reprisals. The fear of publicity attending the fact of their contribution or association deters many who would otherwise be disposed to contribute or associate themselves with SCEF and other civil rights organizations. The action of the Joint Legislative Committee on October 4, 1963, including the raids, arrests, searches and seizures is well calculated to destroy the effectiveness of

Southern Conference Educational Fund. It requires tremendous expense to attempt to reconstruct the lists, books, records and ledgers that have been confiscated and not returned. It greatly deters contributors and participants; some contributors because of the fear of publicity attending the fact of their contribution, and other contributors and participants because of the association with an organization labeled or accused of subversion. Fund raising activities as well as other activities of SCEF above mentioned have been hurt to some extent by the police action taken on October 4, 1963, although the exact extent of the harm cannot be determined for some time.

That criminal charges or indictments against affiant or others would render a tremendously damaging blow to SCEF and to affiant insofar as the effectiveness of their endeavor is concerned. Criminal charges and indictments will greatly deter contributors and active participants and would seriously lessen the effectiveness and the extent of the operation of SCEF in its avowed purpose of elimination of segregation.

That criminal charges or indictments could themselves effectively hamper and stymie the function of SCEF and the activities of affiant in connection therewith irregardless of eventual trial and acquittal, and that the lodging of such charges and indictments could as effectively stymie and hamper the work of the organization and of affiant as could conviction.

_____
JAMES A. DOMBROWSKI

Sworn to and subscribed before me
this ___ day of _____, 19___.

_____
NOTARY PUBLIC

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

---------- X

JAMES A. DOMBROWSKI, BENJAMIN E. SMITH, BRUCE WALTZER and SOUTHERN CONFERENCE EDUCATIONAL FUND, INC.,

Plaintiffs,

-against-

JAMES H. PFISTER, individually and as Chairman of the Joint Legislative Committee on UnAmerican Activities of the Louisiana Legislature, RUSSELL R. WILLIE, individually and as Major of the Louisiana State Police Department, JIMMIE H. DAVIS, individually and as Governor of the State of Louisiana, JACK P.F. GREMILLION, individually and as Attorney General of the State of Louisiana, COLONEL THOMAS D. BURBANK, individually and as Commanding Officer of the Division of Louisiana State Police,

Defendants.

---------- X

COMPLAINT

The plaintiffs for their verified complaint allege:

Parties

1. James A. Dombrowski, Benjamin E. Smith and Bruce Waltzer are citizens of the State of Louisiana and of the United States.

2. Southern Conference Educational Fund, Inc., is a corporation organized under the laws of the State of Tennessee, maintaining an office for business purposes in the State of Louisiana, whose purpose is to help to secure to Negro citizens the rights guaranteed to them under the United States Constitution and to end all forms of racial segregation and discrimination in the interest of Negro and white citizens of the Southern states.

3. Defendant James H. Pfister is a Louisiana State representative and Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature. He is sued individually and in his capacity as Chairman of said Committee.

He is a citizen of the State of Louisiana.

4. Defendant Russell R. Willie is a Major in the Louisiana State Police Department. He is sued individually and in his capacity as Major of Louisiana State Police. He is a citizen of the State of Louisiana.

5. Defendant Jimmie H. Davis is Governor of the State of Louisiana. He is sued individually and in his capacity as Governor. He is a citizen of the State of Louisiana.

6. Defendant Jack P.F. Gremillion is Attorney General of the State of Louisiana. He is sued individually and in his capacity as Attorney General. He is a citizen of the State of Louisiana.

7. Defendant Thomas D. Burbank is Commanding Officer of the Division of Louisiana State Police. He is sued individually and in his capacity as Commanding Officer of the Division of State Police. He is a citizen of the State of Louisiana.

Jurisdiction of the Court

8. The jurisdiction of the Court over the Complaint arises under Title 28 U.S.C. 1331(a), 1343(3, (4), 2701, 2202, 2281; Title 42, U.S.C. 1971, 1981, 1983, 1985, and under the Constitution of the United States and in particular the First, Fourth, Fifth and Fourteenth Amendments thereto.

9. The amount in controversy, exclusive of interest and costs exceeds the sum or value of $10,000.00.

The Cause of Action

10. The defendants herein, under color of certain statutes of the State of Louisiana have entered into a plan or conspiracy with other persons to the plaintiffs unknown to subject or cause to be subjected the plaintiffs, citizens of the United States, to the deprivation of rights, privileges and immunities

secured to them by the Constitution and laws of the United States.

11. Pursuant to this plan or conspiracy the defendants have attempted to and threaten to continue to attempt to prosecute the individual plaintiffs under the color and authority of certain state statutes, namely Louisiana Revised Statutes 14:358 et seq. and 14:390 et seq.

12. Defendants Pfister and Willie without any basis whatsoever in fact attempted to institute the prosecution of the individual plaintiffs by obtaining on October 6th, 1963 certain warrants of arrest as well as search warrants based upon sworn affidavits alleging that the plaintiffs had conspired to violate the aforementioned statutes. These arrest and search warrants were served and acted upon by police officers under the control of the defendants herein. Despite the fact that the warrants of arrest were summarily vacated by a Judge of the Criminal District Court for the Parish of Orleans upon a holding that there was no probable cause for the issuance of the warrants, defendant Pfister nevertheless threatened and continues to threaten to attempt to obtain new prosecutions of the plaintiffs under the same statutes.

13. Louisiana Revised Statutes 14:358 through and Louisiana Revised Statutes 14:390 through are void and illegal on their face and as applied to the plaintiffs herein, in that they violate the Constitution of the United States and in particular the First, Fourth, Fifth, Eighth and Fourteenth Amendments thereto. These state statutes violate the fundamental guarantees of free speech, press, assembly and the right to petition the government for a redress of grievances. They violate the guarantee of due process of law in that they are vague and indefinite and fail to meet the requirement of certainty in criminal statutes. They violate the prohibitions against ex post facto legislation and bills of attainder and represent an unconstitutional delegation of legislative power, all in violation of the Constitution of the United States.

14. The aforesaid state statutes are likewise void and

illegal and of no force or effect in that they invade areas pre-empted to the exclusive jurisdiction of the United States by statutes and laws enacted by the Congress of the United States.

15. Pursuant to the aforesaid conspiracy and plan the defendants have threatened and continue to threaten to enforce the said unconstitutional void and illegal state statutes against the plaintiffs herein for the sole purpose of subjecting and causing to be subjected the plaintiffs and the members, friends and supporters of the plaintiff corporation to the deprivation of rights, privileges and immunities secured to them by the Constitution and laws of the United States.

16. The plaintiffs and the members, friends and supporters of the plaintiff corporation have been attempting through peaceful and non-violent means to achieve the elimination of all forms of racial segregation in the states of the South and the State of Louisiana and to assist and encourage Negro citizens to exercise their rights to register and vote in federal and state elections. These objectives are specifically protected and guaranteed by the Constitution of the United States and the Thirteenth, Fourteenth and Fifteenth Amendments thereto. In their constant efforts to achieve these constitutionally protected efforts, the plaintiffs and the members, friends and supporters of the plaintiff corporation have been attempting to exercise rights guaranteed under the First and Fourteenth Amendments to freedom of speech, press, assembly and association and the right to assemble, associate and petition for a redress of grievances.

17. Unless this Court restrain the operation and enforcement of these void, invalid and unconstitutional state statutes the plaintiffs, and the members, friends and supporters of the plaintiff corporation will suffer immediate and irreparable injury.

The sole purpose, intention and effect of threatening to enforce said statute is to deter, intimidate, hinder, and prevent the plaintiffs, and the members, friends and supporters of

plaintiff corporation from exercising their fundamental constitutional rights guaranteed under the First and Fourteenth Amendments in their efforts to enforce the equality under the law guaranteed by the Thirteenth, Fourteenth and Fifteenth Amendments.

Accordingly unless this Court restrains the operation and enforcement of these void, invalid and unconstitutional state statutes the plaintiffs, and the members, friends and supporters of the plaintiff corporation will continue to suffer the most serious, immediate and irreparable injury in that they will continue to be deterred, intimidated, hindered, and prevented from exercising elementary and fundamental Federal constitutional rights.

18. Plaintiffs have no adequate remedy at law.

WHEREFORE plaintiffs pray for the following relief:

1. That pursuant to Title 28 U.S.C. 2281 and 2284 a three-judge federal district court be immediately convened to hear and determine this proceeding;

2. That a permanent injunction issue

a) restraining the defendants, their agents and attorneys from the enforcement, operation, or execution of Louisiana's Revised Statutes 14:390 through and Louisiana Revised Statutes 14:358 through , and

b) restraining the defendants, their agents, and attorneys from impeding, intimidating hindering and preventing the plaintiffs or members, friends and supporters of plaintiff corporation from exercising the rights, privileges and immunities guaranteed to them by the Constitution and laws of the United States.

3. That a Declaratory Judgment issue declaring that Louisiana Revised Statutes 14:390 through , and Louisiana Revised Statutes 14:358 through are void on their face, null and void as violative of the Constitution of the

United States.

4. That pending the hearing and determination of the prayers for permanent relief on interlocutory injunction issue restraining the defendants, their agents, attorneys and all others acting in concert with them from enforcing in any way the provisions of Louisiana Revised Statutes 14:358 through _____, and Louisiana Revised Statutes 14:390 through _____, or for instituting or undertaking any proceedings whatsoever pursuant to said statutes against the plaintiffs herein.

Plaintiffs respectfully pray that the above relief be granted.

Plaintiffs by their attorneys

Kunstler Kunstler & Kinoy
511 Fifth Avenue
New York 17, N.Y.

By Arthur Kinoy
Michael J. Kunstler
William M. Kunstler

Milton E. Brener
1304 National Bank of Commerce Bldg.
New Orleans 13, Louisiana

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

JAMES A. DOMBROWSKI, etc.,
Plaintiffs

-against-

JAMES H. PFISTER, etc.
Defendants

NO. _____

DIVISION _____

MOTION FOR CONVENING OF
THREE-JUDGE DISTRICT COURT

The plaintiffs, James A. Dombrowski and Southern Conference Educational Fund, Inc., through their attorneys move that pursuant to Title 28 U.S.C. 2281 and 2284, a three-judge Federal District Court be immediately convened to hear and determine this proceeding; that pending the hearing and determination of the prayers for permanent relief, an interlocutory injunction issue restraining the defendants, their agents, attorneys and all others acting in concert with them from enforcing in any way the provisions of Louisiana Revised Statutes 14:358 through 14:388 and Louisiana Revised Statutes 14:390 through 14:390.5 or from instituting or undertaking any proceedings whatsoever pursuant to said statutes against the plaintiffs herein.

MILTON E. BRENER
1304 National Bank Commerce Building
New Orleans 12, Louisiana
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES A. DOMBROWSKI, et al	)
Plaintiffs,	)
-against-	)
COLONEL THOMAS D. BURBANK, et al	)
Defendants.	)

MOTION FOR PRELIMINARY INJUNCTION

The plaintiffs, James A. Dombrowski and Southern Conference Educational Fund, Inc., by their attorney, Walter R. Dillon, Jr., moves the Court for an order granting a temporary restraining order and preliminary writ of injunction against the defendants, Senator James Eastland and J.G. Sourwine their agents and employees, pending this suit, and until further order of the Court, upon the grounds and in accordance with the prayers as set forth in the complaint filed herein.

Walter R. Dillon, Jr.
Attorney for Plaintiffs

DOMBROWSKI V. OFISTER TYPE CASES

Box 45
Folder 7

Please Return Original Order

LAW CENTER FOR CONSTITUTIONAL RIGHTS
116 MARKET STREET - NEWARK, NEW JERSEY

JUNE 25, 1968

Dear Colleague:

The April 22, 1968, decision of the Supreme Court in Cameron v. Johnson, 36 L.Wk. 4319 has caused a good deal of confusion and consternation among those of us who have been using injunctive and declaratory relief causes of action to obtain vindication of First Amendment rights.

The Court denied injunctive and declaratory relief in Cameron in the factual context of completely peaceful picketing and on grounds which appear to strike directly at the heart of Dombrowski v. Pfister, 380 U.S. 479 (1964). To recap a bit: Dombrowski mandates injunctive relief where statutes abridging expression are unconstitutional on their face or as applied for the purpose of discouraging protected activity.

While Cameron does not alter the first Dombrowski criterion [facial unconstitutionality], it plays havoc with the second [bad faith prosecution irrespective of facial constitutionality]. In order to establish bad faith i.e. unconstitutionality as applied in Dombrowski, plaintiffs alleged continued threats of prosecution and harassing public statements by law enforcement officials. Similar allegations in Cameron were held insufficient to establish the need for relief.

In Cameron in fact, the Court held that a continued prosecutorial intent to press the charges was evidence of good faith application of the state law! The dilemna ~~thereby~~ created is that if threats to try the charges are alleged, good faith is inferred whereas if such threats are not alleged, there will be, on the face of the complaint, no reason for requesting injunctive relief. Furthermore, in Cameron, if the record is "not totally devoid of evidence" to support the State charges, the trials may proceed. This is another new standard created since Dombrowski wherein there was a vast amount of "evidence" to support the charges but the Court did not consider or credit it.

Cameron appears to be a bellweather signalling a serious retreat by the Court from its prior stance. We must, until we devise a substitute for federal affirmative injunctive and declaratory suits, treat Cameron as a case factually distinct from Dombrowski and argue the Dombrowski legal criteria as if they are unaltered.

The enclosed petition for rehearing in Cameron has been denied. However, we offer it to you as a more extensive treatment and analysis of the opinion than has been above given. The section on 28 U.S.C. § 2283 goes to the question of whether that section bars injunctive relief in a 42 U.S.C. § 1983 cause of action. That issue was left undecided in Cameron [but see footnote 4 of the dissenting opinion]. The § 2283 excerpt is taken from the Cameron brief written by Arthur Kinoy..

Also enclosed please find Monthly Report #4, Memoranda #2 and 3, and an excellent opinion by Judge Smith in Hunter v. Allen, (C.A. No. 11328, N.D.Ga., May 17, 1968), wherein he suggests a manner of treating Cameron that may be plausible at least for arguments sake. That opinion was rendered in a case handled by Howard Moore, Jr. and Peter Rindskopf of Atlanta, Georgia, working in cooperation with the Legal Defense Fund.

Very truly yours

Morton Stavis
Administrative Counsel

MS/lmg
Enclosures

LAW CENTER FOR CONSTITUTIONAL RIGHTS
116 Market Street - Newark, New Jersey - 07102

MEMORANDUM NO. 2

One of the most imaginative uses to which the Dombrowski theory of enjoining prosecutions under statutes which deter the exercise of First Amendment rights has been put is Ell Gee Corp. v. Ensign, (C.A. No. C68-78, N.D Ohio, Western Div.). In Ell Gee, a preliminary injunction issued on April 29, 1968 to enjoin the City of Toledo, Ohio from enforcing its ordinance banning burlesque. The action was brought on behalf of a Toledo burlesque theater by Jack E. Gallon, Dan H. McCullough and Harry Mee of the Toledo Bar.

Mr. Gallon has also put the Dombrowski decision to use in obtaining a permanent injunction against prosecution under an ordinance of Findlay, Ohio which required a license to be purchased for distributing handbills. The action grew out of labor union activity. Leedy v. Sausser (N.D. Ohio, Western Div.). Since the issuance of the permanent injunction a damage action has been commenced by the attorneys for the plaintiffs in the same court based upon the improper arrest of plaintiff Leedy by the city officials of Findlay, Ohio.

slj

LAW CENTER FOR CONSTITUTIONAL RIGHTS
116 Market Street - Newark, New Jersey - 07102

MEMORANDUM NO. 3

A very important decision has been rendered in Harris v. Lee, (C A. No. 12459, D. Conn., May 27, 1968) by Blumenfeld, J., denying a motion to dismiss on behalf of the City and State officials. Harris is an action modeled after Kidd v. Addonizio (C.A No. 899-67, D.N J.) -- see Montly Report #2 (16) -- seeking to enjoin the New Haven Police from harassing and intimidating the black community by their use of massive unlawful force, surveillance, racial slurs, arrests for 1st Amendment activity, failure to provide protection and by releasing inflammatory and prejudicial material to the press. Plaintiffs also sought injunctive relief against the local press. The court dismissed as to the press, but denied the motion to dismiss for failure to state a cause of action as to the police and city officials. Because of the importance of this decision, relevant excerpts from the opinion are attached.

The action was brought by Catherine Roraback of the New Haven Bar and Samuel Gruber of the Stamford Bar.

slj

LAW CENTER FOR CONSTITUTIONAL RIGHTS
116 Market Street - Newark, New Jersey - 07102

MONTHLY REPORT #4

June 6, 1968

1. Dawkins v. Green #3(1)*/ (C.A. No. _____, N.D. Fla.) - Brief filed May 31, 1968, on three-judge court. Evidentiary hearing set for June 14, 15, 1968. William Kunstler and local counsel.

2. Bucher v. Selective Service (N.J. #1(5), #2(3), #3(2) - Preliminary injunction denied May 17, 1968. Government motion to dismiss also denied. Will be appealed to Third Circuit. George Logan, Dennis J. Roberts and Harriet Van Tassel with New Jersey A.C.L.U.

3. New Jersey v. Funicello #1(2), #2(7), #3(3) - Argued before New Jersey Supreme Court June 3, 1968. George Logan with Anthony Amsterdam and Legal Defense Fund.

4. McSurely v. Ratliff #1(10), #2(6), #3(5) - Reply brief filed in Sixth Circuit. Will be argued June 21, 1968. Morton Stavis, William M. Kunstler with Dan Jack Combs.

5. Cameron v. Johnson #1(3), #3(7) - Petition for rehearing before United States Supreme Court denied June 3, 1968. Arthur Kinoy, Ben Smith, Harriet Van Tassel.

6. Di Suvero v. Imperiale #3(8) - Full hearing on preliminary injunction held May 20, 1968. No decision yet. Discovery motion denied as criminal charges pending. This will be appealed to the Third Circuit. Morton Stavis with local counsel and A.C.L.U.

7. H. Rap Brown #2(11), #3(10) - Convicted and sentenced to 5 years on federal weapons charged in New Orleans. An appeal will be filed. William M. Kunstler, Murphy Bell, Howard Moore.

8. Grossner v. Trustees of Columbia University #3(12) - Motion to enjoin disciplinary proceedings pending disposition of criminal charges to be heard June 11, 1968. Brief is being prepared. President Kirk and other defendants noticed for depositions. William M. Kunstler, Dennis J. Roberts, with Lubell & Lubell and other local counsel.

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*/ Refers to number of prior monthly report where case described. Number inside ( ) is paragraph number of report.

9. Selective Service #1(21B), #2(12) - Lawyers panels are in the process of being set up in Philadelphia, Chicago and Detroit. Harriet Van Tassel with Aubrey Grossman.

10. Austin, Texas - S.D S. people arrested for "interfering with the lawful business of another". Suit filed attacking the statute. T.R.O. denied. James Simonds and Bobby Caldwell, local counsel with Harriet Van Tassel.

11. Sellers v. Pendarvis (#68-313, D.S C.) - Suit filed May 8, 1968 against South Carolina officials growing out of police massacre of students at Orangeburg. Suit seeks to enjoin prosecution and to put police department into receivership. George Logan with Fred Moore.

12. Braden v. Nunn #2(18) - Suit was dismissed by District Court as "premature". Will be appealed. William M. Kunstler with Robert Sedler, Neville Tucker, Dan Taylor, III.

13. DuBois v. Clark #1(18), #2(10) - Brief in opposition to Government and Board's motion to dismiss filed. William M. Kunstler, Dennis J. Roberts, with Kayo Hallinan, David Rein and A.C.L.U.

14. Wright v. Montgomery #2(15) - Motion to dismiss appeal was denied. Designation of record sent to Fifth Circuit. Morton Stavis and Ben Smith.

SUBSECTIONS OF ATLANTA DISORDERLY
CONDUCT ORDINANCE HELD
UNCONSTITUTIONAL IN HUNTER v. ALLEN

"Section 20-7.

It shall be unlawful for any person within the corporate limits of the City of Atlanta to violate any of the following sections of this ordinance:

* * *

(c) Any person who shall endanger the lawful pursuits of another by acts of violence, angry threats and abusive conduct or

* * *

(e) Any person who shall assemble or congregate with another or others for the purpose of causing, provoking or engaging in any fight or brawl; or

(f) Any person who shall be found jostling or roughly crowding or pushing any person in any public place; or

(g) Any person who shall collect in bodies or in crowds for unlawful purposes as defined by the current ordinances of the City of Atlanta; or

* * *

(l) Any person who utters while in a state of anger in the presence of another any bawdy, lewd or obscene words or epithets; or

* * *

(n) Any person who shall act in a dangerous manner towards others; or

* * *

(p) Any person who shall assemble or congregate for the purpose of trouncing upon another; or"

* * *

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FRED L. HARRIS, JR., et al.,	:	Civil No. 12,459
-vs-	:	
RICHARD C. LEE, et al.	:	RULING ON MOTION TO DISMISS

* * *

The Claim Against the Individual Defendants

After alleging in broad language that the plaintiffs are seeking to obtain full and equal participation in the political, social and economic affairs of the City of New Haven, and in pursuance of that objective are inducing others and have themselves become associated with Hill Parents Association, Inc. and Operation Breakthrough, two non-profit corporations with similar purposes, they further allege that these defendants by a systematic pattern of conduct carried out under color of law have deprived them of their rights to freely speak, assemble, associate and petition in furtherance of those objectives. Under appropriate circumstances, a civil rights complaint may be dismissed when its allegations are wholly conclusory. Corcoran v. Yorty, 347 F.2d 222 (9th Cir.), cert. denied, 382 U.S 966 (1965); Annew v. City of Compton, 239 F.2d 226 (9th Cir. 1956), cert. denied, 353 U.S. 959 (1957).

The question of what degree of specificity will save a complaint from failure to state a claim and yet not be so

lengthy and redundant as to run contrary to Fed.R.Civ.P. 8(a) [f.n. omitted] is not without its niceities. However, satisfactory guidelines for the court are provided by the Ninth Circuit case of Hoffman v. Halden, 268 F.2d 280, 295 (1959), dealing with an alleged conspiracy: [quote omitted]...

* * *

Having special regard then for the overt acts alleged, it is clear that paragraphs 13 and 16 form the heart of the first count of plaintiffs' complaint:

> "13. These acts have included but are not limited to:
>
> "(a) Beating and intimidation and humiliation of the plaintiffs and the members of their class;
>
> "(b) Referring to the plaintiffs and the members of their class with derogatory, humiliating and obscene racial epithets and in other ways refusing to accord to the plaintiffs and the members of their class the respect due citizens from officers of the law;
>
> "(c) Surveillance of the plaintiffs and the members of their class, both individually and in connection with their organizational activities in R.P.A. and otherwise;
>
> "(d) Arresting the plaintiffs and the members of their class both for acts done individually and in connection with their organizational activities in R.P.A and otherwise.
>
> "(e) Refusing to give the plaintiffs and the members of their class proper protection from criminal acts perpetrated against them or from threats of such criminal acts;
>
> "(f) Secretly furnishing and leaking to defendant newspapers New Haven Journal Courier and New Haven Register information and statements concerning the plaintiffs and the members of their class which are exaggerated, misleading, inflammatory and highly prejudicial, such as that Negroes had reportedly attempted to extort money from Hill area merchants and that the plaintiff Harris and another unidentified man were being investigated by a Federal Grant Jury in New Haven as principals who may have attempted such extortion.

* * *

"16. These acts included but were not limited to:

"(a) Employing massive and unlawful force, including in addition to direct physical force the use of tear gass and mace, a toxic, gaseous substance causing pain, temporary blinding and temporary paralysis of the nervous system.

"(b) Massive and unnecessary arrests of the plaintiffs and members of their class solely on account of their race, on charges, among others, of violating a curfew purportedly proclaimed by the defendant Lee.

"(c) Refusing to give to the plaintiffs and members of their class protection from criminal acts being perpetrated against them.

"(d) Acts having no purpose or justification other than to harass, humiliate and degrade the plaintiffs and the members of their class."

Certainly they make reference to a number of overt actions allegedly carried out by the defendants and those under their control in furtherance of a conspiracy to deprive plaintiffs of numerous constitutional rights. That specifics as to the dates, locations and individuals involved are not provided and does not render the complaint insufficient. Specificity can be obtained through pre-trial discovery procedures. [f.n. omitted]. Among the alleged acts, if proved to have been taken pursuant to a conspiracy and if resulting as alleged in deprivations of constitutional rights, are several [f.n. omitted] which furnish a proper basis for injunctive relief under the Civil Rights Statutes.

Defendants present two additional points in opposition to the complaint. First, they raise the defense of official immunity to suit under the Civil Rights Statutes citing Gregoire v. Riddle, 177 F.2d 579 (2d Cir. 1949), cert. denied, 339 U.S 949 (1950), and Runnels v. Parker, 263 F.Supp. 271 (C.D.Cal. 1967). It is sufficient to dispose of this argument to note, as the court did in Runnels at 274, that both of those actions were brought to impose monetary damages on the named defendants. They did not seek injunctive relief. Whatever may be the wisdom

of freeing officers carrying out official duties calling for the exercise of discretion from monetary liability, it does not apply to an action seeking injunctive relief. That is made clear by the several cases arising in the Fourth and Fifth Circuits which have granted such relief against city or town officials holding positions similar to those of defendants herein. Lankford v. Gelston, 364 F.2d 197; NAACP v. Thompson, 357 F.2d 831 (5th Cir.), cert. denied, 385 U.S. 820 (1966); Cottonreader v. Johnson, 252 F.Supp. 492; United States v. Clark, 249 F Supp. 720 (S D. Ala. 1965). Those same cases also dispose of defendants' remaining argument that this action is improper because no effective decree affording plaintiffs the relief they seek could be framed.

The defendants argued that when the streets are permitted to become a battleground for the expression of ideas and violence to the rights of others is threatened, they may in the proper exercise of their authority take such steps as are necessary to maintain order. That argument is a proper one to make after a determination has been made of the facts and circumstances with which they were confronted. Such a determination cannot be made on a motion to dismiss for failure to state a claim.

Accordingly, the motion of the defendants Lee, McManus Finer, Antonlino, DePalma, Loring and Smith to dismiss is denied.

* * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

REV. ROBERT HUNTER, REV. ELROY EMBRY, JAMES GIBSON, SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE, INC., HENRY BASS, THE ATLANTA WORKSHOP IN NON-VIOLENCE, and all others similarly situated vs. IVAN ALLEN, JR., Mayor of the City of Atlanta, Georgia; HERBERT T. JENKINS, Police Chief of the City of Atlanta, Georgia; and J. R. SHATTLES, Police Officer of the City of Atlanta, Georgia	CRIMINAL ACTION NUMBER 11328

ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

This is a class action brought by the above named individuals, the Southern Christian Leadership Conference, Inc. and the Atlanta Workshop in Non-Violence, as well as all Negro residents of Atlanta similarly situated against Mayor Allen, Chief of Police Jenkins, and Police Officer Shattles, both individually and in their designated capacities. Plaintiffs allege that jurisdiction arises under 28 U.S.C.A §§1331(2), 1343(3) and (4), 2201 and 2202; 42 U.S C.A. §§1981, 1983, and 1985; the Civil Rights Act of 1964, 42 U.S.C.A §§2000(d) and 2000(e) and the Constitution of the United States (1st, 4th, 5th, 6th, 8th, 9th, 10th, 13th, and 14th Amendments). The heart of the complaint is that the named defendants have used the disorderly conduct ordinance of Atlanta, which is allegedly invalid and unconstitutional, to deprive the plaintiffs of their constitutionally guaranteed rights. Plaintiffs allege that they have been attempting through peaceful and non-violent means to achieve the elimination of all forms of racial segretation, that

these activities, though constitutionally protected, have been unlawfully interfered with by the named defendants and that these defendants threaten to continue this interference unless restrained. Plaintiffs pray for interlocutory and permanent injunctive relief as well as declaratory relief against the enforcement of and continued existence of §20-7, "Disorderly Conduct" provisions of Atlanta's Municipal Code.

THE FACTS

This case arises out of two separate and distinct sets of facts. Case number one involves the conviction of Henry Bass, Susan Bass, Ron Ausburn, Jim Gehres and John Jacobs for violation of subsection (q) of Section 20-7 of the Disorderly Conduct Ordinance of Atlanta, Georgia. These and other persons all members of the Atlanta Workshop in Non-Violence, an unincorporated membership association "devoted to the cause of world peace and the solution of national and international problems and controversies by non-violent means" on the morning of October 16, 1967, in a protest against the war in Vietnam sat down and blocked the front doors of a privately owned building at 900 Peachtree Street, N. E., Atlanta. This building contained several of Atlanta's Selective Service Local Boards. The building custodian, R. M. Lander, attempted repeatedly to leave the building through the front door but the above mentioned persons continued to block the doors. These persons refused to move and finally were placed under arrest and charged with violating Section 20-7(q). At their trial they were informed that they were charged with violation of §20-7(q) and five of the group were convicted, fined $250.00 and sentenced to sixty days in jail. Thirty days of the sentences were suspended on condition that neither they nor any members of their group were convicted of any violation of federal, state, or municipal laws. The trial judge refused to

allow counsel to prove that the racial composition of the draft boards within the building was such that they were illegally composed.

Case number two relates to the arrest and conviction of Rev. Embry, Rev. Hunter, and James Gibson, members of the Southern Christian Leadership Conference. These persons were arrested while protesting the construction of portable classrooms at Turner High and were convicted of violating §20-7. On October 24, 1967, J. R. Mathis, who was hired to construct these classrooms, arrived at the school to begin work. He found that the entrance-way gate was blocked by the car of Rev. Embry. After requests for the removal of the car, the police arrested Rev. Embry and impounded his car. He was conviction of vidating §§20-7(q) and (r). Defendants now purport to disavow the finding of guilty under subsection (r) because Embry had no notice of that charge at the time the case was originally tried. Soon after Rev. Embry's arrest, Rev. Hunter and Gibson stepped in front of the Mathis vehicle and refused to move. For this continued refusal to move, these two were also arrested and subsequently convicted under §20-7(q).

THE CONTENTIONS

Having briefly viewed the facts, it is necessary to examine the precise relief requested by each party and the contentions of the parties arising therefrom. Plaintiff has asked that §20-7 of the Charter, Related Laws, and Code of Ordinances of the City of Atlanta be declared unconstitional.[1] This section

---

[1]Plaintiff concedesthat subsections (h), (i), (j), and(m) do not have the requisite obvious facial applicability to protected activity. Therefore, the Court's references throughout this order to §20-7 will automatically, unles otherwise indicated, exclude these four subsections.

represents the so-called "Disorderly Conduct" provision of the Atlanta ordinances. Plaintiffs contend that the ordinance is so sweeping, inclusive and over-broad as to be facially unconstitutional. Plaintiffs contend that this ordinance is basically the same, and equally as objectionable, as the ordinance struck down in Carmichael v. Allen, 267 F. Supp. 985 (N.D. Ga. 1967). The following terms which appear in the new section are singled out and described as "forbidden terms" and as "sweeping terms": (1) angry threats (sub-section c); (2) riotous conduct (subsection d); (3) congregate (subsections e, h, p, r); (4) danger, endanger (subsections a, b, c, d, n,); (5) abusive (subsection a); outraged (subsection o); unlawful purposes (subsection g); violent (subsections a, b, c, q); tumultous (subsections a, b); and obscene (subsection l). Plaintiffs stress that their activities are of a nature protected by the first amendment: picketing, presenting their grievances to the government, leafleting. The vice of the Atlanta statute attacked is that the terms of this statute are inherently subjective and broad and therefore subject to an extraordinary sweep in the hands of those charged with applying them. For purposes of their summary judgment, it is contended that there are no material disputes as to the facts, i.e., the statute is unconstitutional on its face. By virtue of the nature of their activities and the continued threat that this statute and its enforcement poses, plaintiffs contend that there is present a concrete adversity of interest. As a logical extension of the above, plaintiffs show that under the case of Zwickler v. Koota, 389 U.S. 241 (1967) and its predecessors, the Court has no discretion to abstain from deciding the merits of plaintiffs' claims. Finally, plaintiffs contend that their challenge validly extends to the ordinance in its entirety. Plaintiffs argue that the disorderly conduct ordinance is a unity, that it is not a loose association of disparate

elements but rather it is a tightly-knit union of subsections designed to reach one and the same end in full cooperation with each other. Plaintiffs illustrate at length the interconnection between these subsections and rely heavily upon the practice of the Municipal Court of Atlanta wherein the judge has the right, or at least purports to have the right, to alter the formal charge to fit the particular violation established by the evidence. (See Exhibit "C", p. 7).

On the other hand defendants contend that the Court does not have jurisdiction to pass on the constitutionality of any other subsection of §20-7 except subsection (q). Defendants claim to have disavowed conviction under §20-7(r), for the failure to give notice of that charge before trial. Defendants contend that there is no justiciable controversy as to the other subsections. It is defendants position that subsection (q) is constitutional, for it is geared towards protecting the right of every citizen engaged in a lawful business without interference of a violent nature. Moreover, the defendants argue that they are entitled to injunctive relief against: (1) the continued violation of the civil rights of Mathis and all those workers similarly situated; (2) the continued violation of the civil rights of Landers and all those similarly situated; (3) the continued violation of section 20-7(q); the plaintiffs continuing to conduct themselves in any manner or in any way which would effect or diminish the fundamental constitutional rights guaranteed under the Constitution of all those persons named above.

JURISDICTION

The court is convinced that it cannot properly abstain from deciding the merits of plaintiff's claim, i.e. the claim

that the Atlanta Ordinance is on its face unconstitutional in that its overbreadth results in (or could result in) an invasion of First Amendment protected activities. This conclusion is dictated by the decision in Zwickler v. Koota, 389 U.S 241 (1967) and its predecessors.

On the other hand, the individual plaintiffs stand convicted and sentenced in the municipal courts and such convictions have not been appealed. Consequently, there is no power in the federal courts to set aside or correct any previous such conviction as being illegal on constitutional grounds or as being improper in that conviction was had under the wrong section of the ordinance. The proceedings here cannot substitute for an orderly appeal.

In such posture, the case is subject to declaratory relief on First Amendment grounds only and the proper inquiry is whether the ordinance violates the First Amendment on its face or in its "chilling effect" as threatened. Dombrowski v. Pfister, 380 U.S. 479 (1965) and its progeny.

Even so, a difficult threshold question is whether plaintiffs have standing to attack the entire ordinance or merely the sections under which they stand convicted.

To argue for a limitation of this order to one of the subsections is to misunderstand the crux of the complaint. Plaintiffs contend that all of the subsections are so overbroad as to chill their exercise of first amendment privileges. This must be viewed in the contenxt of the past history of this ordinance. Originally, it consisted of one section, but after being declared unconstitutional, it was divided into a number of subsections. Moreover, the interrelationship between most of these subsections is obvious. If most of the sections (excepting those previously mentioned at fn. 1) are not dealt with in this opinion, then plaintiffs activities may arguably be interferred with by defen-

dants. Subsequently, resulting in needless litigation over the same rights.

Under such circumstances, the court is constrained to test the ordinance in its entirety, excluding only those sections not attacked (h, i, j, and m) and those which could not arguably relate to First Amendment rights (k). [2]

In connection with such inquiry, the court is mindful of the fact that many substantive criminal offenses are the subject of other ordinances and that the principles of "aiding and abetting" may be used to secure arrest and convictions thereunder. Further, the Court takes judicial notice of the existence of the state criminal law covering many offenses which may be utilized to punish what, in lay terms, may be considered as "disorderly conduct".

THE HOLDING

Turning then to a consideration of the pertinent sections of the ordinance, there are certain principles which are evolving relating to proper and improper attempts to restrict the exercise of free speech and free assembly. See Cox v. Louisiana, 379 U.S. 536 and 559 (1965). While the line is sometimes fine, the presence of violence or the clear danger to persons or property normally is a sufficient basis for restriction. Such foundation for a disorderly conduct statute is both permissible and even a desirable technique. Nor need such statutes negate every possible defense, such as the licensed violence of sports events. Most criminal statutes are subject to affirmative though unspecified defenses, i.e. absence of criminal intent, self-defense, performance of official duty, entrapment, etc. Thus then, in the area of violence and/or danger, statutes are

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[2] Non First Amendment claims are normally the subject of defense in the event of prosecution. Cf. Greenwood v. Peacock, 384 U.S. 808 (1966); Thompson v. City of Louisville, 362 U.S. 199 (1960); Note, 1 Ga. L. Rev. 656.

normally upheld. See e.g. Landry v. Daley, ___F. Supp. ___ (#1863, N. D Ill. March 4, 1968); Baker v. Bindner, 274 F. Supp. 658 (W. D. Ky. 1967). Moreover, the Supreme Court has demonstrated that violence goes beyond the protected area of free speech and free assembly. See e.g. Cameron v. Johnson, ___U.S.____(36 L. W 4319 at 4321, April 22, 1968); Adderly v. Florida, 385 U.S. 39 (1966); Feiner v. New York, 340 U.S. 315 (1951); Carmichael v. Allen, 267 F. Supp. 985 (N.D.Ga. 1967) (where the court dealt with the predecessor of this statute).

Tested on the above, the following sections, while at times inartfully drawn, are valid: (a)[3], (b), (d), (o), and (q). In this connection, it will be noted that (o) goes even beyond the ordinance approved in Chaplinsky v. New Hampshire, 315 U.S 568 (1942), cited with approval in Cox v. Louisiana, supra, in that an act of violence must erupt from the "fighting words." It is concluded that each of the above sections "clearly and precisely delineates its reach in words of common understanding." See Cameron v. Johnson, supra. In this connection, the broad assertion that the word violence has a stained meaning in Georgia jurisprudence is rejected. The authorities are legion in every jurisdiction which give the word sufficient common understanding to sustain hundreds of criminal statutes. Moreover, if particular conduct is disputed as violent, it is a proper matter to raise for determination in a trial in that case.

In the court's opinion, the following sections attempting to deal with violence and danger must fall: (c), (f), and (n). The vice of each is the failure to proscribe conduct within

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[3]Though subsection (a) is held to be valid, the Court is constrained to comment that the use of the word "fear" substantially weakens the subsection, for this subjects the subsection to the criticism found in Terminello v. Chicago, infra. This subsection is distingishable from Terminello, for it requires that the person act first in a violent manner. A better construction, it would seem, would be to substitute the word "danger" for "fear" (whereby any person's life, limb or health is placed in danger of harm") or another such substitution which would replace the subjective test of "fear" with a more objective standard.

sufficiently precise and narrowly drawn limits evincing an objective determination of prohibited conduct. See Edwards v. South Carolina, 372 U.S. 229 (1963). In short, the standards are overwhelmingly subjective. What is an "angry threat"? What is "abusive" conduct? What is "roughly crowding"? What is a "dangerous manner"? The reaction of some unknown third party could determine the guilt or innocence of the accused. See Terminello v. Chicago, 337 U.S 1. (1948). Accordingly, they must yield to the need for some ascertainable objective standards. Section (c) in part is good, but repetitious of (a) and (b). Moreover, there is ample basis for public protection in the existing assault and assault and battery provisions of state law for any punishable offense which might be covered by these sections.

A second group of sections, as presently drawn, impinge on freedom of assembly. This for the reason that they omit the commission of some overt act as a prerequisite for arrest and conviction. The sections are (e), (g) and (p). The court is constrained to believe that the First Amendment permits assembly even for unlawful purposes so long as it is limited to a peaceable discussion of such purpose. These sections do not punish the exhortation, encouragement, or commission of preparatory acts leading toward a violation of law, (see Fox v. Washington, 236 U.S. 273 (1915), cited approvingly in Cox v. Louisiana, 379 U.S. 559 (1965); Feiner, supra) but punish the assembly itself. Evil thoughts alone do not constitute any crime. E.g. Young v. Georgia, 82 Ga. 752; 22 C.J.S., Criminal Law §29. Nor would peaceable assembly with evil thoughts do so either. Thus, a quiet meeting in a back room of two or more persons even if it were to conjure up some future violation of law, is permissible. It is only when

such assembly results in the commission of overt acts that it becomes unlawful. This is not to say that participants could not be punished as aidors and abettors in the substantive offense under recognized standards. Further, since the State of Georgia has at long last recognized that conspiracy itself may now exist as a substantive offense, conceivably an ordinance could be drawn punishing such an offense on the local level providing it coupled the assembly with the recognized standard of a subsequent overt act. However, in their present form, they punish assembly in a certain state of mind--opposition to the draft laws, the prohibition laws, the income tax, or any of the ordinances of Atlanta.

Only recently the Supreme Court has reiterated the power of a municipality to control the flow of traffice on its streets and sidewalks and to permit ingress and egress to public and private property, (See e.g., Cameron v. Johnson, supra; Adderly v. Florida, supra; Cox v. Louisiana, supra) if such restrictions are designed to operate in a nondiscriminatory manner.

Section (r) is a reasonable exercise of this power. Under the section, no right is granted to an individual policeman to order anyone off of the streets without cause, it is only refusal of such an order coupled with a blockage of traffic that is punishable. As such, it meets the requisite tests and withstands any attack made here.

Lastly, Section (l) is an oblique attempt to deal with the problem of public obscenity. There are indications that the use of obscenity in the presence of females, minors, or in public places is properly prohibitable, the inference being that "obscene" as an ascertainable meaning. See Ginsberg v. New York, ___U.S. ___ (36 Law Weekly 4295, April 22, 1968). And, a proper ordinance to such effect might be drawn. Cf., Chaplinsky, supra; University

Committee to End the War In Viet Nam v. Gunn, Civil Action 67-73-W at p. 2, fn. 1 (W.D. Texas, April 9, 1968.)

However, here, the ordinance adheres to some archaic and unknown standard of "bawdy" or "lewd." Nor would words spoken in anger alone be prohibited. No law attempts to control argument or heated debate or even the occasional angry outburst in the courtroom. As vague and indefinite, this section constitutes an overbroad restriction on free speech.

On the sections sustained, there is no showing of any bad faith prosecution of the plaintiffs and, moreover, the facts as developed by these concurrent motions for summary judgment negate any such finding.

In summary, the court has ruled on Section 20-7 of the Atlanta Ordinance as follows:

(a) Valid; (b) Valid; (c) Invalid; (d) Valid; (e) Invalid; (f) Invalid; (g) Invalid; (h) Not attacked; (i) Not attacked; (j) Not attacked; (k) No jurisdiction; (l) Invalid; (m) Not attacked; (n) Invalid; (o) Valid; (p) Invalid; (q) Valid; (r) Valid.

Accordingly, an appropriate decree prohibiting future prosecutions under Sections (c), (e), (f), (g), (l), (n), and (p) of said ordinance may be presented.

The prayers for injunctive relief by the defendants are denied.

IT IS SO ORDERED.

This the 17th day of May, 1968.

Sidney O. Smith, Jr.

Sidney O. Smith, Jr.
United States District Judge

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

NO. 699

JOHN EARL CAMERON, et al.,

Appellants,

v.

PAUL JOHNSON, etc., et al.,

Appellees.

PETITION FOR REHEARING OF THE
AFFIRMANCE OF THE DECISION
OF THE THREE-JUDGE DISTRICT COURT
BELOW DISMISSING THE COMPLAINT

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IN THE

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PETITION FOR A REHEARING

TO THE JUSTICES OF THE SUPREME COURT:

Appellants respectfully request this Court to reconsider its ruling of April 22, 1968.

I. THE RECORD HEREIN IN LIGHT OF THIS COURT'S DECISION IN COX v. LOUISIANA, 379 U.S. 536, 559 (1964), ESTABLISHES SELECTIVE ENFORCEMENT OF THE LAW SUCH AS REQUIRES INJUNCTIVE RELIEF.

The evidence of selective enforcement in this case is so compelling and the precedent of Cox v. Louisiana, 379 U.S. 536, 559 (1964) so clearly binding that the Court is urged to rehear and reconsider this case rather than allow to stand an opinion which may be interpreted as overruling Cox, supra, sub silentio. The parallels which exist between Cox and the instant action are so remarkable as to merit this Court's further attention.

Appellants suggest that in light of the striking similarities between the statutes and evidence regarding selective enforcement thereof in Cox and the instant case, the Court, upon a careful reading of the record herein, cannot but find unconstitutional selective enforcement. It is because a finding of selective enforcement is pivotal in assessing the need for injunctive

relief, that appellants will here consider the Cox precedent in detail.

The statute regarding obstruction of public passages in Cox is similar, in every relevant respect to that before the Court in Cameron v. Johnson. *

The Louisiana statute at issue in Cox reads as follows:

> "No person shall willfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road or other passageway, or the entrance, corridor or passage of any public building, structure, watercraft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein." 379 U.S. at 553.

This statute, like the statute before the Court in Cameron, purports to prohibit all obstructions [in that case, willful obstructions] and makes no exemptions [except one not here relevant, for labor organizing] for any particular parades or meetings having "official" consent. This Court held, in Cox, that the statute on its face "...precludes all street assemblies and parades..." 379 U.S. at 556, and went on to state its finding that the statute "... has not been so applied and enforced by the Baton Rouge authorities." 379 U.S. 556. The Courts language in Cox so fits the circumstances in Cameron that it could have been written directly for this case:

> "City officials who testified for the state clearly indicated that certain meetings and parades are permitted in Baton Rouge, even though they have the effect of obstructing traffic, provided prior approval is obtained. This was confirmed in oral argument before this Court by counsel for the State. He state that parades and meetings are permitted based on 'arrangements * * * made with officials.' The statute itself provides no standards for the determination of local officials as to which assemblies to permit or which to prohibit." 379 U.S. at 556

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* There is one extremely important distinction between the Cox and Cameron statutes which is that the former contains the element of "willful" obstruction while no such standard obtains in the latter. See discussion of this issue infra at p.

By simply comparing the two statutes on their faces, it is clear that the rule appertaining to one must appertain as well to the other. Thus unless this Court intended to overrule its decision in Cox, which appears not to be so as the Court cited Cox approvingly in its Cameron opinion, appellants urge the Court to reconsider its opinion here and reconcile the existing inexplicable disparity of treatment of the strikingly similar Cox and Cameron statutes.

Not only are the statutes at issue in Cox and Cameron virtually identical in all relevant respects but the evidence of selective enforcement of the statutes is further extraordinarily similar. As noted above, the Court found in Cox, on the basis of testimony of city officials and statements by counsel for the state on oral argument, that certain parades and meetings were allowed, notwithstanding the statute, so long as the city consented thereto. 379 U.S. at 556. Indeed, in Cox, Justices White and Harlan dissented from the Court's reversal of the obstruction convictions on the ground that the evidence of selective enforcement was not really sufficiently argued and adduced for the record below. Thus, if the meagre record evidence of selective enforcement in Cox satisfied the Court of its existence there, it would appear, a fortiori, necessary that the Court so find in the instant case where the record is replete with such evidence. See for example, Record at 122-23, 144-45, 161-62, 174-75, 195, 264. Consider, for example, the testimony, on cross-examination, by Mr. Dukes, County Prosecutor of Forrest County:

> "Q. Now, Mr. Dukes, have there been any parades in Forrest County particularly in Hattiesburg since the arrests of May 18th?
>
> "A. Yes sir, parades schools [sic] which included white and colored bands, school children, cheer leaders, floats and so forth.
>
> "Q. Do those parades ever block the streets?
>
> "A. Well, I am sure they do but I didn't ever hear anybody complain about it though.
>
> * * *
>
> ...I was informed that they had permission of the city the mayor and commissioners.
>
> "Q. Now does this statute contain anything about getting a permit to hold a parade?
>
> "A. No sir, sure doesn't."

Record at p. 264.

In the face of the striking similarities of the Cox and Cameron obstruction statutes and the facts adduced to support appellants' allegations of selective enforcement, the dissimilar conclusions reached by this Court are virtually inexplicable save for the possibility that the Court intended to overrule its decision in Cox. If the Court, as appellants believe, would maintain the vitality of the Cox precedent, then it is respectfully urged that the opinion in Cameron be reheard and reconsidered.

If, as appellants alleged, there is in fact selective enforcement of the Mississippi statute at issue then an injunction against continuing prosecution must issue. Selective enforcement is a classic index of bad faith prosecution. Cox v. Louisiana, supra, Adderly v. Florida, 385 U.S. 39, 47 (1966), Edwards v. South Carolina, 372 U.S. 229, 236 (1962), Yick Wo v. Hopkins, 118 U.S. 356. In the recent cases just above cited, this Court has assured that the issue of selective enforcement is the ultimate check upon the power of the state to regulate picketing or demonstrating. It is inconceiveable that the Court now intends to retreat beyond the position taken by it in Adderley. Although the Court was in severe disagreement in Adderley as to whether the conduct there under scrutiny was constitutionally protected, there was total agreement on one issue: that had there been a finding of other than "even-handed enforcement", 385 U.S. at 47 of the law, the State's charges could not be sustained. In the instant case, as in Cox, the evidence of selective enforcement is undeniably clear. In the face of such evidence, an injunction should issue to prevent prosecution and its attendant chilling effect on protected First Amendment activity. Unless such an injunction issues, this Court will have created a situation wherein a different rule of law will be applied to Louisiana (Cox) and Mississippi (Cameron) demonstrators. The dilemma posed is, simply stated, that the Court denies elemental equal protection of the laws to appellants herein or that it has sub silentio overruled its opinion in Cox v. Louisiana. In order to make its resolution of that issue clear, the Court is urged to grant the rehearing herein prayed.

Appellants recognize one attempt by the Court to avoid the issue of selective enforcement so clearly presented by the record herein. Throughout

the opinion, the majority stated that "... the Statute prohibits only 'picketing... in such a manner as to obstruct or unreasonably interfere with free ingress or egress to or from any ... county ... courthouse ...'." The statute, however, also provides that:

> "It shall be unlawful ... to engage in ... mass demonstrations in such a manner as to ... obstruct or unreasonably interfere with free use of public streets, sidewalks, or other public ways adjacent or contiguous ... [to the courthouse]."

And the opinion of the majority goes on, in the face of the above-quoted portion of the statute to hold that:

> "... the streets of the downtown area, including the locale of the courthouse, were cordoned off during daytime business hours <u>and the sidewalks were obstructed by crowds of spectators during the parades</u>. But this statute is not aimed at obstructions resulting from parades on the city streets. All that it prohibits is the obstruction of or unreasonable interference with ... traffic on the streets or sidewalks adjacent to those buildings, [e.g., the courthouse]." Slip opinion for the majority at p.11, emph. suppl.

Thus in the space of three sentences, the Court finds that the sidewalks were obstructed and that the statute prohibits such obstruction. Yet on the basis of these facts, the Court concludes that there was no selective enforcement of the law. The majority must be accepting the rationale advanced by Judges Coleman and Cox below, to wit, "... we are not here dealing with parades carried on by common consent on the public streets...". Record at 49. The inescapable inference to be drawn from this statement is that, with this Court's sanction, Mississippi "... is attempting to pick and choose among the views it is willing to have discussed on its streets." See Opinion of Mr. Justice Black in <u>Cox</u> v. <u>Louisiana</u>, 379 U.S. at 581. This Court has heretofore uniformly adhered to the requirement that "... if the streets of a town are open to some views, they must be open to all." 379 U.S. at 580. The First Amendment is in serious jepoardy unless this Court repudiates the concept that demonstrations "carried on by common consent" are the only expressions of public sentiment to be given a public forum in Mississippi. As such an inference is the only one which can be drawn from this Court's reading of the statute, the Court is urged to reconsider and clarify its opinion so that it is consonant with the prior opinions of the Court and the First Amendment to the Constitution.

II. THE CRITERIA OF DOMBROWSKI v. PFISTER, 380 U.S. 479 (1965) PARTICULARLY THAT ASPECT REGARDING BAD FAITH PROSECUTION, ARE SATISFIED AND INJUNCTIVE RELIEF IS REQUIRED.

1. The Court's reading of the record herein is key to its approach to the consideration of the Dombrowski criteria. By wrongly assessing the record herein specifically in regard to the issue of bad faith prosecution as evidenced by selective enforcement of the law, the Court may have begun to recast Dombrowski and its mandate relating to harassing prosecutions.

The second Dombrowski v. Pfister criterion is in critical need of rehearing in the context of this case.*/ At the outset it is crucial to recognize that there is no doubt but that the Court understood there to be two branches of Dombrowski, i.e. ". . . where . . . statutes are justifiably attacked on their face as abridging free expression or as applied for the purpose of discouraging protected activities." 380 U.S. 479 at 489-490. Were there no standard involving unconstitutional application of State law, the Court would have concluded its opinion upon finding the statute constitutional on its face. Thus the issue is not at all whether there is a second branch of Dombrowski, but rather what that branch mandates.

The Court's opinion in Cameron, it is respectfully suggested, creates considerable confusion concerning the allegations necessary to establish prosecutorial bad faith with the purpose of

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*/ In light of their request for injunctive relief against prosecutions here threatened, appellants urge upon the Court the necessity that it consider and pass upon the question of ". . . whether 28 U.S.C. Section 2283 (1958 ed.) bars a federal injunction in this case. . ." 381 U.S. 741. The Court has kept the question so posed open for three years. In Dombrowski v. Pfister, 380 U.S. 479, 484, Fn. 2, the Court expressly declined to reach a decision of the question. On remand, the first time Cameron was before this Court, reconsideration of the issue below was ordered. 381 U.S. 741. Numerous cases, now pending determination in the federal courts on every level, raise this issue. See for example Zwicker v. Boll, October Term, 1967, No. 573 Misc.; Brooks v. Briley, October Term, 1967, No. 1285 Misc; Nichols v. Vance, S.D. Tex., Civ. Act. No.68-H-162 (1968). Thus, the resolution of this question is in the interest not only of the appellants herein, but of the proper administration of the federal courts. It requires this Court's attention.

harassment. The majority states that two considerations in establishing bad faith are first, whether the Prosecutor has "any expectation of obtaining convictions", Slip Opinion for the majority at 8, and second, whether the Prosecutor has any "intention of pressing the charges", Slip Opinion for the majority at 8. These standards foreshadow an extraordinary and dangerous departure from the rule laid down in Dombrowski. The essence of Dombrowski lies in a recognition by the Court that it is the trial itself which produces a chill upon First Amendment rights. 380 U.S. at 487. There is absolutely not the slightest doubt but that the Prosecutor intended to press the charges in Dombrowski itself as the whole opinion turned on a discussion of the chilling effect of the trials which could only result if the charges were pressed. The Court's opinion in Dombrowski is replete with findings that the charges were going to be vigorously pressed. See for example, 380 U.S. at 488. In fact it was this very aspect of Dombrowski, the continued and open threat of prosecution, coupled with the initial arrests and subsequent presentment to a grand jury, that lead this Court to hold that a case or controversy there existed and was ripe for federal intervention.

As to the question of "obtaining convictions", the Court again sets up a standard not existing in Dombrowski. The issue as it was framed in Dombrowski, was not whether the Prosecutor would obtain convictions at the state trial level but rather whether prosecution was "without any hope of ultimate success", 380 U.S. at 490. The Court in Cameron states:

> "We have not hesitated on direct review to strike down applications of constitutional statutes which we have found to be unconstitutionally applied to suppress protected freedoms."
> Slip Opinion for the Majority at 9.

It is difficult to believe that within the space of three years, the Court that wrote of the chilling effect of the trial procedure itself could have reached the conclusion just above quoted. It is clear from the record in this case that, upon direct appeal of any convictions which may be obtained herein, this Court will reverse the trial

court's outcome. The indicia which point to this conclusion are as follows:

a) The State has virtually conceded, in its brief in this Court, that there is no evidence whatever to sustain the charges made on three out of four occasions on which arrests occurred. Thus this Court is not faced with a determination of the guilt or innocence of the appellants. It is not even called upon to find, independently through a search of the record, that there is no evidence to support the charges. Cf. Thompson v. City of Louisville, 362 U.S. 199 (1959). The appellants assert that the total lack of evidence to support the charges is incontrovertable proof of the "bad faith" nature of continuing prosecution herein.

b) There is only one occasion, the morning of April 10, 1964, on which there is any evidence to support the charges, evidence characterized by Mr. Justice Fortas herein as "unimpressive shreds". Slip Opinion Dissenting at 10. However, in numerous other recent cases, this Court has reversed, for insufficiency, convictions obtained on the basis of much fuller evidence than this. See, for example, Cox v. Louisiana, supra; Edwards v. South Carolina, 372 U.S. 229; Thompson v. City of Louisville, supra. In fact, in Dombrowski, prior to the arrests challenged, the State legislature had compiled five full volumes of "evidence" to support the criminal charges lodged against appellants.

In short, appellants herein, and the Dombrowski criteria themselves, in no wise require this Court to engage in the weighing of evidence to determine the guilt or innocence of these appellants. What is required is a recognition of the bad faith prosecutions which are proven at a minimum by the threats of continuing prosecution with no "hope of ultimate success". With such a record before the Court, ultimate relief on direct appeal will be too little and too late.

2. The majority opinion in this case suggestes, as evidence of the good faith, or at least contradictory of appellants' evidence of bad faith, that ". . . the authorities believed that until

enactment of the statute on April 8th they had no choice but to allow the picketing." Slip Opinion for the Majority at 9. This assumption by the Court is in total and absolute contradiction to the actual facts of the situation. This Court had before it in City of Greenwood, Mississippi v. Peacock, 384 U.S. 808 (1965), the following statute which was in effect in Mississippi during April and May, 1964, when the arrests at issue were made:

> Section 2296.5 Miss. Code;
>
> "It shall be unlawful for any person or persons to wilfully obstruct the free, convenient, and normal use of any public sidewalk, street, highway, alley, road, or other passageway by impeding, hindering, stifling, retarding or restrain-traffic or passage thereon . . ."*/
> 384 U.S. at 810 fn. 1.

In light of the existence of this statute, it becomes absolutely clear that Mr. Justice Fortas' characterization of the Cameron statute as a "rifle-shot law, neatly directed to this particularly situation", Slip Opinion Dissenting at 6, was correct in every respect. Appellants suggest that there was a very good reason why the Peacock statute was not invoked in the instant case. To obtain convictions under that statute, it would be necessary for the State to prove not only obstruction but also wilful obstruction of public ways. This would have been impossible, as the Court has recognized, because the picketers never deviated or strayed out of the march route especially designated by the police.

3. When Cameron v. Johnson was before this Court the first time, 381 U.S. 741, the Court remanded with instructions to reconsider the issues in light of the criteria set forth in Dombrowski v. Pfister, supra. The first of those criteria is that federal relief is appropriate where ". . . statutes are justifiably attacked on their face as abridging free expression." 380 U.S. 489-490. At the very least, the statute here involved, because of constitutionally impermissible overbreadth, meets that criterion and its operations should be enjoined.

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*/ This is the statute, in haec verba, that was involved in Cox v. Louisiana, supra.

If the arrests of the afternoon of April 10, April 11 and May 18, 1964, are sustainable under this Mississippi statute, then the statute is overbroad and should be so declared. There is not a single shred of evidence of obstructive picketing in the record in this case to sustain charges entered on those three occasions. Appellants so argued and stated in their brief before this Court; appellees concurred in that statement of the facts. The only dispute between the parties as to the facts concerned the situation existing on the morning of April 10, 1964, when the initial arrests were made. Thus, by all accounts, this Court never pointing to any evidence to the contrary, as none existed, the picketing on three occasions out of four was absolutely peaceful and non-obstructive. By this Court's decision, however, this protected, classic First Amendment conduct was subject to prohibition under the Mississippi statute. The statute must therefore be overbroad in violation of the Constitution. See Zwickler v. Koota, 88 S.Ct. 391 (1967) and United States v. Robel, 88 S.Ct. 419 (1967). The Court is therefore urged to rehear and reconsider its decision as regards this case.

III. THE FEDERAL COURTS MUST NOT ABANDON THEIR PRIMARY RESPONSIBILITY FOR THE PROTECTION OF FEDERAL RIGHTS.

The political turmoil in our country once again is reaching the level of constitutional crisis. The Kerner Commission has pointed out that the violent explosions in our cities result from the inability of our nation to extricate the many threads of racism from our social fabric. Student activism and militance have increased as the nation's social and political probems have moved closer to the campus. A national political issue has begun to emerge over whether constitutional safeguards against excessive governmental authority should be constricted in order to increase the power of police forces throughout our communities. While the promises of several constitutional amendments and Civil Rights Acts are still largely unfulfilled, an effective Bill of Rights, as applied to the states, is being characterized throughout the country as a dangerous set of handcuffs on police authority.

Several Justices have noted publicly in recent weeks their concern that the people of our nation understand the proper relationship between the proper exercise of constitutional rights and the state's authority to control public conduct. In this light appellants are concerned whether the position of the Court in Cameron v. Johnson portends a new approach to the role of the First Amendment vis-a-vis dissent. Appellants are concerned that in the heat of the political battle that is developing a momentary will to restrict the significance of the First Amendment may prevail, unless the Court maintains an affirmative and primary role in protecting this back bone of our democratic system.

In periods of relative political and social calm the importance of having a First Amendment may not seem so important. But in periods of crisis the First Amendment must flourish and prevail if the views of the minority, if the right to dissent, if the fundamental democratic nature of society, is to survive.

As Justice Black, joined by Justices Warren, Douglas and Brennan, so sharply pointed out in his dissent in Barenblatt v. United States, 360 U.S. 109, 151-152 (1959), when he thought the Court was retreating from the lessons of the First Amendment:

> "History should teach us then, that in times of high emotional excitement minority parties and groups which advocate extremely unpopular social or governmental innovations will always be typed as criminal gangs and attempts will always be made to drive them out. It was knowledge of this fact, and of its great dangers, that caused the Founders of our land to enact the First Amendment as a guarantee that neither Congress nor the people wouldd o anything to hinder or destroy the capacity of individuals groups to seek converts and votes for any cause, however, radical or unpalatable their principles might seem under the accepted notions of the time. . . . [T]he First Amendment sought to leave Congress devoid of any kind or quality of power to direct any type of national laws against the freedom of individuals to think what they please, advocate whatever policy they choose, and join with others to bring about the social, religious, political and governmental changes which seem best to them. Today's holding, in my judgment, marks another major step in the progressively increasing retreat from the safeguards of the First Amendment.

Cameron is not merely a case about the validity of a state law in the area of the First Amendmt and that is why appellants are concerned about what the Cameron decision may portend. Petitioners contend that Cameron cannot be understood outside of its proper historical context. What appellants cannot understand is the construction which this Court has apparently placed on the historical facts through which Cameron emerged.

The events in Cameron took place in Mississippi during the Spring, 1964, before either the 1964 or 1965 Civil Rights Acts were passed by Congress. No black citizen of Mississippi held a local, county or state governmental office at that time. About five percent of the black citizens old enough to vote in Mississippi were actually registered. Ku Klux Klan -- and White Citizens' Council -- organized terror struck almost everywhere in Mississippi that black citizens began to exercise their fundamental federal constitutional rights. Black citizens were killed or beaten, their

homes and churches bombed or burned, their families attacked, their employment cancelled. The all-white law enforcement agencies of Mississippi either acquiesced in, or participated in this systematic campaign of terror to deter black citizens from exercising their federal constitutional rights. The all-white political leadership of Mississippi made crystal clear its opposition to participation in the political process by black Mississippians.

The same political forces were in power in Mississippi in 1964, in fact are still in power, that overthrew the constitutional, but integrated, government of Mississippi in 1875 by force and violence. See Wharton, The Negro in Mississippi, 1865-1890, Chapter XIII. The techniques for forcing black citizens out of the political process in the 1870s were no different than those used in 1964: murder, burning, economic pressure. The goal was also the same: an all-white one party state. Political rights, symbolized by the First and Fifteenth Amendments, were nullified in Mississippi by force and violence.

But the wartime Amendments and Civil Rights Acts gave the federal executive and courts ample power in the 1870s to protect the federal constitutional rights of black citizens, to ensure that Mississippi would be ruled by law rather than terror. In the heat of the political crisis of 1876 the perfidy of 1877 was forged: the institutions of the federal government would no longer assume primary responsibility for the protection of the primary federal rights of black Americans.

In the wake of this national political decision, which was reflected in the historic decisions of this Court in the 1880s and 1890s, a rigid system of apartheid-like segregation was enforced to ensure the permanent exclusion of black citizens from the political process. To the present day the white rulers of Mississippi have resisted a society based on our written Constitution, based on the principles of the First Amendment. To the extent they have yielded, the white rulers have done so under pressure from the

federal government.

The encouragement of resistance to government by law under our Constitution has been a point of pride for Mississippi politicians. Governor Paul Johnson, who signed into law in 1964 the anti-picketing statute in Cameron campaigned for election on a platform of wilful destruction of the principles of the national Constitution. Governor Johnson told a White Citizens' Councils Leadership conference (Oct. 25, 1963, Jackson, Miss.):

> A two-party system is certainly not the answer in . . . Mississippi. . . . As your governor . . . I will resist the integration of any school anywhere in Mississippi. The closing of our schools is not the only answer. We can and will maintain a system of segregated schools! When local authorities are organized to resist and not surrender, your governor has great powers which have not yet been used.
>
> We learn from our mistakes. I am proud to have been part of the resistance last Fall to Meredith's entrance at Ole Miss. . . .[I]t is plain now that we might have done more, and should do more the next time. Interposition of your governor's body between the forces of federal tyranny and his people, including our children, is a price not too great to pay for racial integrity. I pledge you here tonight that I am prepared to pay such a price! Remember, there is no such thing as "token" integration. So-called "token" integration is just a break in the levee that leads to the flood.

These same forces of resistance controlled the entire law-making and law enforcement machinery of Mississippi in the Spring of 1964. They are still in Mississippi. It is into these hands that petitioners will be delivered as a result of the decision in Cameron. The use of the state criminal apparatus to harass the exercise of constitutional rights is not a new concept. It was with that very problem in mind that Congress enacted removal, injunctive and habeas corpus remedies after the Civil War to provide federal scrutiny of a state criminal process which was controlled by the former slave-owners. But Adderley v. Florida, 385 U.S. 39 (1966), Peacock v. City of Greenwood, supra, and now Cameron portend a second major withdrawal by the federal courts from scrutiny of the

state criminal process still in the hands of the lawless white leadership. It will be an ironic and tragic twist of history if the forces of resistance to constitutional democracy should finally prevail, in the name of law and order, over those trying to breathe life into the Constitution in the Deep South.

As Justice Douglas, joined by Justices Brennan, Warren and Fortas, pointed out in the Adderley dissent:

> Today a trespass law is used to penalize people for exercising a constitutional right. Tomorrow a disorderly conduct statute, a breach-of-the peace statute, a vagrancy statute will be put to the same end. It is said that the sheriff did not make the arrests because of the views which petitioners espoused. That excuse is usually given, as we know from the many cases involving arrests of minority groups for breaches of the peace, unlawful assemblies, and parading without a permit. . . . [S]uch arrests are usually sought to be justified by some legitimate function of government. Yet by allow- these orderly and civilized protests against injustice to be suppressed, we only increase the forces of frustration which the conditions of second-class citizenship are generating amongst us.

What appellants cannot understand is how the Court, apparently, can turn its back on the clear historical record underpinning the arrests in this case. Does Cameron portend that the reaffirmation of primary responsibility for vindicating federal constitutional rights announced by Justice Brennan for the Court in Zwickler v. Koota, 389 U.S. 241,247 (1967), will not apply where Mississippi uses the criminal process against completely peaceful and orderly demonstrations?

Justice Brennan, in his Law Day remarks on May 1 of this year, stressed that:

> Our constitutional system protects weapons of protest, criticism, peaceable assembly and dissent to a degree not permitted in any other country. . . . Non-violent techniques used by Negroes have brought a peaceful revolution of historical proportions and enormous potential. . ..

Justice Brennan for the Court, in Dombrowski v. Pfister, 380 U.S. 479 (1965) and N.A.A.C.P. v. Button, 371 U.S. 415 (1963), pointed out that the state criminal process, if unscutinized by the federal courts could provide an effective weapon for the suppression of legitimate First Amendment expression. Where the state criminal

process and the First Amendment come into a direct conflict, is not the First Amendment the higher authority? Does Cameron portend that the vitality of the First Amendment will be crushed under pressure from the state through its criminal process? See Feldman v. United States, 322 U.S. 487, 499-502 (1944), Black, J., dissenting.

Appellants are concerned whether Cameron portends that where the state criminal process is the tool of one political view to suppress contrary views the federal courts will accept uncritically the outward appearance or trappings of rule by law, although in fact there exists despotism, not constitutionalism. All that petitoners were asking in 1964, and are asking now, is that black citizens be allowed to participate in the political process in accordance with the Federal Constitution and federal laws. All that appellants did in 1964 was walk with signs, in the classic nonviolent manner, in the area outlined by police, to petition the government at its county seat of power, the courthouse. Was this too much to ask 89 years after it had been denied by force and violence in 1875? Was this such a terrible manner in which to ask, in light of the terror and violence inflicted by whites upon blacks in 1964 because the black people did so ask? Was the return to rule by law under the Constitution, asked for by black people as they walked around the courthouses, so threatening to the State's interest that the criminal process could justifiably be invoked to preserve the security of the State? See concurring opinion of Brandeis, J. and Holmes, J., Whitney v. California, 274 U.S. 357, 375,377, 378 (1927).

Justice Brennan pointed out in his Law Day remarks that we should not let mere doctrinal considerations blind us to the far more important consideration of breathing life into the commitments of the Constitution. (at p. 5 of the printed edition):

> Law is a technique and a vocation, but it is more than that: it is public policy. If lawyers do not learn to stand back and view the laws they manipulate in the broader perspective of their implications for policy, the profession cannot begin to make the contribution to social progress and reform that its strategic place in the American social scheme equips it for. Law should

> be taught and practiced as more than a craft, with less emphasis, perhaps, than at present on doctrine procedure, and authority, and more on the social and economic policies which the law embodies and protects.

But does Cameron portend that the vitality of the First Amendment will be allowed to dissipate under pressure from state police, while the federal courts become increasingly mired in the doctrinal problems concerning federal protection of federal rights?

Chief Justice John Marshall, in Marbury v. Madison, put his finger on the problem facing the Court in Cameron:

> To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation.

Appellants simply cannot understand the role of the First Amendment nor the supremacy of the Constitution if they cannot be protected in this situation against the lawlessness of Mississippi State officials.

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POINT I

28 U.S.C. Section 2283 does not bar a federal injunction in this case.

1. Section 2283 does not bar relief in this case under the principles of comity embodied in that statute.

The original judgment in this case was vacated and the cause remanded for reconsideration in light of Dombrowski v. Pfister, 380 U.S. 479. On this remand the district court was directed to "first consider whether 28 U.S.C. Section 2283 bars a federal injunction in this case" 381 U.S. at 741. The response of the majority of the lower court not only failed to grasp the essence of Section 2283, the federal anti-injunction statute, but disregarded entirely this Court's direction to consider the question involved "in light of Dombrowski v. Pfister".

The majority below viewed 2283, the 1948 revised version of Section 265 of the Judicial Code of 1911[11] as an inflexible limitation upon the power of federal courts to enjoin pending state court criminal proceedings. Applying this analysis the majority below concluded that 42 U.S.C. 1983 under no circumstances creates "an exception to the anti-injunction statute". The lower court offered no rationale for this assumption but chose instead to rest solely upon the decision of the majority of the Fourth Circuit sitting en banc in Baines v. City of Danville, 397 F.2d 579 (1964). But this conclusion not only misconceives the Fourth Circuit's own analysis of the thrust of the federal anti-injunction statute. It ignores the direction of this Court that this analysis itself must be reconsidered "in light of Dombrowski v. Pfister".

What the majority below has failed to grasp is that any analysis of the impact of Section 2283 upon a particular request for the invocation of federal equity power must rest upon the threshold recognition, hitherto unchallenged in this, or any court, that Section 2283 and its statutory predecessor, Section 265, are not jurisdictional statutes. They are codifications and statutory reflections of principles of comity

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11 Both statutes relate back to Section 5 of the Judiciary Act of 1793, Ch. 22, 1 Stat. 333, 335. See Revisor's Note, 28 U.S.C. 2283. See also Toucey v. N. Y. Life Insurance Co., 314 U.S. 118.

and equity. As this Court said in respect to Section 265 in Smith v. Apple, 264 U.S. 274, "It is not a jurisdictional statute. . .In short it goes merely to the question of equity in the paticular bill".[12] The majority below seeks to avoid "any dissertation on 'jurisdiction' or 'comity'" (App. 46), but these conceptual considerations cannot be so lightly disregarded when they are at the heart of a misconception, which if not rejected, results in undermining the ability of the "independent federal judiciary" to meet its highest obligation as "guardians" of the fundamental rights of the people. Cf. Chapman v. State of California, ____ U.S. _____, 87 S.Ct. 824, 826 (1967, opinion of Mr. Justice Black, for the Court).

The crux of the matter is that 2283, like its statutory predecessor Section 267, cannot be read as a rigid, "mandatory . . . prohibition". See majority opinion below (App. 46). Rather, as Professor Moore has pointed out "[P]roperly considered Section 2283 as a whole does not go to the jurisdiction of a federal court, but is an affirmation of the rules of comity, and hence should be read in conjunction with the judicial principles developed for our dual system of courts". Moore, Commentary on the Judicial Code, Sect. 03 (4a) p. 407.[13]

Thus Baines v. City of Danville, the very opinion the majority below relies upon to bottom its conclusion that 2283 absolutely bars federal injunctive relief in this case, offers an analysis of the anti-injunction statute which leads inescapably "in light of Dombrowski v. Pfister" (cf. the mandate of this Court in the first appeal), to the conclusion reached by Circuit Judge Rives that "under the circumstances of this case" 2283 is no bar to federal injunctive relief.

For in Baines, the Fourth Circuit, recognizing that 2283 "is not a jurisdictional statute" pointed out that "since the statute was

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12 See also Sovereign Camp Woodmen of the World v. O'Neill, 266 U.S. 292, 45 S.Ct. 49, 67 L.Ed. 293; First Nat.Bank & Trust Co. of Racine v. Village of Skokie, 7 Cir., 173 F.2d 1; American Optometrick Ass'n v. Ritholz, 7 Cir., 101 Fi.2d 883; Jamerson v. Alliance Ins. Co. of Philadelphia, 7 Cir., 87 F.2d 253; T. Smith and Son v. Williams,5 Cir., 275 F.2d 397.

13 See the comment of Circuit Judge Wisdom in Southern California Petroleum Corp. v. Harper, 273 F.2d 715, 5 Cir. (1959), "Section 2283 is essentially a rule of comity, and the demand that a federal court interfere with state court proceedings is directed to the discretion of the Court".

fathered by the principles of comity, it has been held that the statute should be read in the light of those principles, and, though absolute in its terms, is inapplicable in extraordinary cases in which an injunction against state court proceedings is the only means of avoiding grave and irreparable injury". 337 F.2d at 593. However, the Fourth Circuit majority, deciding its case in the summer of 1964, concluded that the "principles of comity" prohibited any federal interference with state court criminal proceedings under the authorization of the equity cause of action created in the Federal civil rights statute, Section 1983. This conclusion rested upon the assumption that "in every case before the Supreme Court in which federal interference with state court proceedings has been premised upon asserted denials of civil rights, the Supreme Court has required or sanctioned federal forbearance". 337 F.2d 579. Thus the Fourth Circuit in August, 1964, reading 2283 "in light of" the principles of comity which underlie the Federal system, acted upon the assumption that these principles require "federal forbearance . . . exemplified by Douglas v. City of Jeannette, 319 U.S. 157", 337 F.2d at 593.

But a reading of the Baines opinion reveals the essential weakness of the majority below in this case, for their opinion wholly ignores the subsequent holding of this Court in Dombrowski, and fails to "reconsider" conclusions in respect to the impact of 2283, in light of the teachings of that case.

Dombrowski teaches that where state court criminal proceedings are utilized for the purpose of deterrring or intimidating citizens from exercising fundamental federal rights "the fact of the prosecution, unaffected by the prospects of its success or failure" has a "chilling effect upon the exercise of First Amendment rights" 380 U.S. at 487. The protection of these constitutional freedoms, upon which the very life of a democratic society depends, compels the assertion of federal power to restrain such proceedings. This is true whether the state criminal proceedings draw their authorization from a statute vague or overly broad on its face in the area of the First Amendment, or are instituted under color of otherwise valid state statutes but are "part

of a plan to employ arrest, seizures and threats of prosecution under color of statutes to harass" citizens in the exercise of their constitutional rights. Dombrowski v. Pfister, 380 U.S. at 482. See also Mr. Justice White, dissenting in Cameron v. Johnson, 380 U.S. at 755 and Mr. Justice Black, dissenting in Cameron v. Johnson, 380 U.S. 749.

Whatever may be the outer reaches of Dombrowski[14] its essential teaching is clear. In their concurring opinion in Mills v. Alabama, 384 U.S. 214 (1966), Mr. Justice Douglas and Mr. Justice Brennan recently had the occasion to restate the heart of Dombrowski in words which offer an insight into the central question presented here:

> "That result [the decision of the Court to review the case in Mills] follows a fortiori from our holdings that where First Amendment rights are jeopardized by a state prosecution which, by its very nature, threatens to deter others from exercising their First Amendment rights, a federal Court will take the extraordinary step of enjoining the state prosecution. Dombrowski v. Pfister, 380 U.S. 479; Cameron v. Johnson, 381 U.S. 741", 384 U.S. at 220.

In Dombrowski this understanding, that under certain circumstances the "defense of the State's criminal prosecution will not assure adequate vindication of constitutional rights", 380 U.S. at 485, proved the touchstone in resolving the complex questions of federal equity jurisdiction and abstention presented in that case. Underneath the Court's direction that where a state court proceeding "unaffected by the prospect of its success or failure", 380 U.S. at 487, itself creates a "chilling effect upon the exercise of First Amendment rights", 380 U.S. at 487, a federal court of equity has a duty and responsibility to act, lies a conception of the fundamental principles of comity governing the Federal Union which helps to resolve the question as to whether 2283 is a bar to injunctive relief in this case.

Shortly after this Court's decision in Dombrowski, Circuit Judge Wisdom had the occasion to comment upon the underlying principles of comity which led this Court to reject any concept of "federal forbearance", cf. Baines v. Danville, supra, in Dombroski.

14 See generally, The Dombrowski Remedy--Federal Injunctions Against State Court Proceedings Violative of Constitutional Rights, 21 Rutgers Law Review 92 (1966); Boyer, Federal Injunctive Relief; A Counterpoise Against the Use of State Criminal Prosecutions Designed to Deter the Exercise of Preferred Rights, 13 How. L. Jour. 50 (1967).

In explaining why injunctive relief would have been appropriate in the case then before the Court, Cox v. Louisiana, 348 F.2d 750 (5th Cir., 1965), an epilogue to this Court's decision in Cox v. Louisiana, 379 U.S. 559 (1965), Judge Wisdom used words which illuminate the threshold question presented by this appeal:

> The general principle, basic to American Federalism, that United States courts usually should refrain from interfering with the state courts' enforcing local laws is unassailable. But the sharp edge of the Supremacy Clause cuts across all such generalizations. When a State, under the pretext of preserving law and order uses local laws, valid on their face, to harass and punish citizens for the exercise of their constitutional rights or federally protected statutory rights, the general principle must yield to the exception: the federal system is imperiled.15

Again, in a subsequent case arising out of the Fifth Circuit involving the propriety of Federal injunctive interference with state proceedings, Senior Judge Whitaker, sitting by designation, recently formulated the fundamental principles of federalism which justify such interference under the circumstances presented by this case:

> A court of the United States, quite properly, is loathe to interfere in the internal affairs of a State. The sovereignty of the States, within the boundaries reserved to them by the Constitution, is one of the keystones upon which our government was founded and is of vital importance to its preservation. But in Clause 2 of Article VI of the Constitution of the United States it is provided:
>
> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall

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15 Judge Wisdom described the case then before the Fifth Circuit in these terms:

> "The second prosecution is without any hope of success. The district attorney's transparent purpose is to harass and punish the petitioner for his leadership in the civil rights movement, and to deter him and others from exercising rights of free speech and assembly in Louisiana -- in this instance, by advocating integration of public accommodations.
>
> "A civil complaint asserting such an abuse of the prosecutorial function would state a claim under the Civil Rights Act, 42 U.S.C. Section 1983 and justify injunctive relief. Dombrowski v. Pfister, 1965, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22. This not a Douglas v. City of Jeannette, Stefanelli, or Cleary v. Bolger situation."

be made, under the Authority of the United States, shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to to the Contrary notwithstanding.

Hence, any State law, which is in conflict with the United States Constitution or a law enacted by Congress in pursuance thereof, cannot be enforced. Nor can a valid State law be applied in a way to thwart the exercise of a right guaranteed by the Constitution and laws enacted by Congress in pursuance thereof.

So, where it is alleged that certain State laws do so conflict or are being utilized, not for legitimate State purposes, but as an expedient to deprive plaintiffs of the rights guaranteed them by the Constitution of the United States and the laws of Congress enacted under the authority thereof, a court of the United States must entertain the suit and, if the allegations are proven, and injunctive relief appears to be required, it must issue the injunction." NAACP v. Thompson, 357 F.2d 831 (5th Cir., 1966).

It is of course no coincidence that to a large measure it is out of the decisions of the Fifth Circuit[16] that the understanding has emerged which is at the heart of the restatement of federal responsibility implicit in this Court's decision in Dombrowski -- that where state court criminal proceedings operate to "chill" the exercise of fundamental federal constitutional freedoms, the very principles of comity which underlie and draw their vitality from the Federal system require, rather than restrict, the exercise of federal power to restrain such proceedings. These rules of comity which govern the relationship of the federal courts to the state courts, the "general principles" Judge Wisdom refers to in Cox v. Louisiana, must reflect the nature of the political system they are designed to operate within. This is a Federal union. It is not a confederation of equal sovereign powers. The doctrines of American federalism which have emerged through struggles

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16 Cf. for example: Browder v. Gale, 147 F.Supp. 707 (M.D. Ala.), aff'd 352 U.S. 963; Bush v. New Orleans School Board, 194 F.Supp. 182 (E.D.La., aff'd 367 U.S. 907); Dombrowski v. Pfister, 327 F.Supp. 556 (dissenting opinion of Circuit Judge Wisdom); U. S. v. Wood, 295 F.2d 772 (5th Cir.). See generally, Lusky, Racial Discrimination and the Federal Law: A Problem in Nullification, 63 Columbia L.R. 1163 (1963).

and conflict can only be understood in terms of the original repudiation of the political philosophy underlying the Articles of Confederation. Fundamental to the system of government which emerged after 1787 was the recognition that the alliance of independent and separate sovereign states had been replaced by a Federal Union. This new political form represented a bold experiment in government. In order to preserve the values of the independent local self-government entities which the states represented, within the framework of a unified Nation with power to survive and protect the interests of all its citizens, a fundamental allocation of responsibilities had to be made. In this distribution of power the primary responsibility for the protection and preservation of the Union itself and the system of government upon which it rests fell upon the national government.

It is within this context that the relation of Section 2283 to the relief here requested must be examined. The preservation of American federalism, the necessary objective of any rule of comity, requires that this original and fundamental division of responsibility between the national government and the states be respected. The healthy values of a federal system are no more served by a denial of national responsibility than by an intrusion into local responsibility. Upon the national government and the national courts has been placed the primary responsibility for the preservation of those aspects of government essential to the existence of the Federal Union and the protection of the fundamental liberties of the First Amendment is of this order.

Accordingly, if 2283 is indeed "an affirmation of the rules of comity," Moore, Commentary, supra, and "should be read in the light of those principles," Baines v. Danville, supra, it would seem inescapable that the only conclusion which can be drawn from the meaning of this Court's opinion in Dombrowski is that the "principles developed for our dual system of courts", Moore, Commentary, supra, do not foreclose, but in fact require federal equity intervention to restrain state court proceedings where relief is otherwise "proper in light of the criteria set forth in Dombrowski," Cameron v. Johnson, 381 U.S.

741. It is in this sense, we would suggest that, in the words of Circuit Judge Rives "the only real issue in this case" is whether "the facts as proved require the granting of the relief requested." In short, Dombrowski itself answers the preliminary threshold question posed in the Cameron remand. Relief gounded upon a complaint and record which meets "the criteria set forth in Dombrowski" 381 U.S. at 741, is not barred by the principles of comity embodied in the federal anti-injunction statute.[17]

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17 In a recent opinion Circuit Judge Wisdom, concurring with a per curiam opinion of a three-judge statutory court, Ware v. Nichols, 266 F.Supp. 564 [N.D.Miss., 1967, Circuit Judges Coleman and Wisdom and District, now Circuit, Judge Clayton], holding the Mississippi sedition law unconstitutional under the principles of Dombrowski v. Pfister, has had the occasion to discuss the fundamental issues raised by the threshold question in the Cameron remand in this way:

> "This case involves no federal invasion of states' rights protected by Section 2283. Instead, this case requires rightful federal interposition under the Supremacy Clause to protect the individual citizen against state invasion of his constitutionally protected national rights as a citizen of the United States."

Judge Wisdom footnoted his conclusion with this interesting summary of the decided case law:

> "2. Baines v. City of Danville, 4 Cir. 1964, 337 F.2d 579, cert. denied, 381 U.S. 939, 85 S.Ct. 1772, 14 L.Ed.2d 702 (1965) held that Section 1983 is not an exception to Section 2283. In analogous situations, however, decisional authority can be found for injunctive relief or removal. Dilworth v. Riner, 5 Cir. 1965, 343 F.2d 226 authorized injunctive relief for plaintiffs charged with breach of the peace for a sit-in demonstration in a restaurant, a federally-protected right. City of Greenwood v. Peacock, 1966, 384 U.S. 808, 86 S.Ct. 1800, 16 L.Ed.2d 944, denied removal of certain state court prosecutions but recognized the availability of injunctive relief under some of the allegations made in the Peacock removal petitions. Compare State of Georgia v. Rachel, 1966, 384 U.S. 780, 86 S.Ct. 1783, 16 L. Ed.2d 925, permitting removal of state prosecutions for activities now protected by Title II of the Civil Rights Act of 1964. See also Tolg v. Grimes, 5 Cir. 1966, 355 F.2d 92 cert. denied 384 U.S. 988, 86 S.Ct. 1887, 16 L.Ed.2d 1005 (1966); NAACP v. Thompson, 5 Cir. 1966, 357 F.2d 831, 838; Hillegas v. Sams, 5 Cir. 1965, 349 F.2d 859, 863, cert. denied 383 U.S. 928, 86 S.Ct. 927, 15 L.Ed.2d 847 (1966); Cooper v. Hutchinson, 3 Cir. 1950, 184 F.2d 119; Tribune Review Publishing Co. v. Thomas, W.D. Pa. 1957, 153 F.Supp. 486, 490. And see Moore, Federal Practice par. 0.213. (1) at 2416 (2d 1960); Mintz, The Dombrowski Remedy--Federal Injunctions Against State Court Proceedings Violative of Constitutional Rights, 21 Rutgers L. Rev. 92 (1966); Boyer, Federal Injunctive Relief: A Counterpoise Against the Use of State Criminal Prosecutions Designed to Deter the Exercise of Preferred Constitutional

(footnote continues on next page)

2. Prior decisions of this Court support the conslusion that an injunction which meets the criteria of Dombrowski, brought under Title 42 U.S.C. Section 1983, is an "expressly authorized" exception to Section 2283.

The history of the interpretation by this Court of 2283 and its statutory predecessor, Section 265 of the Judicial Code of 1911 supports the conclusion that injunctive relief grounded on Title 42 U.S.C. 1983 which meets "the criteria set forth in Dombrowski" 381 U.S. at 741, should be held to fall within the "expressly authorized" exception to Section 2283.[18]

a. The antecedents of section 2283 and the gloss placed upon the statutes by this Court.

The original version of section 2283 was section 5 of the Act of March 2, 1793, 1 Stat. 335, which provided that:

> . . . nor shall a writ of injunction be granted . . . to stay proceedings in any court of a state . . .

In 1874 an exception was engrafted onto this provision, and its language was slightly rephrased, so that it read (36 Stat. 1162, 28 U.S.C. Section 379, Section 265 of the Judicial Code of 1911):

> The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.

This language remained intact until the revision of 1948.

Notwithstanding the near-absolute language of the act, however, this Court over the years found a variety of "implied exceptions"

(footnote continued from preceding page)
Rights, 13 How. L. Jour. 50 (1967); Brown, Dombrowski v. Pfister, 34 Fordham L. Rev. 71 (1965).

Cf. United States v. Wood, 5 Cir 1961, 295 F.2d 772 holding that 42 U.S.C. Section 1971 is an exception to Section 2283."

18 Section 2283 provides as follows: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." In Dombrowski, this Court found it "unncessary" to resolve the generalized question as to whether suits under 42 U.S.C. 1983 come under the 'expressly authorized exception to Section 2283' and compared Cooper v. Hutchinson, 184 F.2d 119, 124 (3rd Cir. 1950) with Smith v. Village of Lansing, 241 F.2d 856, 859 (7th Cir. 1957" 380 U.S. at p. 484, Footnote 2.

to the sweep of its prohibition. See, e.g., Toucey v. New York Life Insurance Co., 314 U.S. 118 (1941); 1A Moore's Federal Practice 0.208[2], [4], pp. 2302, 2324, 0.209,p. 2401 et seq.; Hart and Wechsler, The Federal Courts and The Federal System, 1075-1076 (1953). One category of such "implied" exceptions, prior to the 1948 revision, was the so-called "statutory" exceptions, i.e., exceptions which appeared to be authorized by other federal statutes. See Toucey v. New York Life Insurance Co., 314 U.S. 118, 132-134 (1941). Other exceptions, not grounded upon federal statutes, were also recognized. See Toucey v. New York Life Insurance Co., supra at 134 et. seq.[19]

One of the "implied exceptions" to the antecedents of Section 2283 which the Court recognized appeared in the Emergency Price Control Act of 1942, 56 Stat. 23. Section 205(a) of this Act (56 Stat. at 33) provided that:

> Whenever in the judgment of the administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision....

In short, the Price Administrator was given general injunctive powers to enforce the Act. In Porter v. Dicken, 328 U.S. 252 (1946), a state court had issued a writ of possession to evict a tenant, and the Administrator sued in federal court for an injunction to restrain the eviction. The district court first issued a temporary restraining order, but later dismissed the complaint "on the ground that §265 of the Judicial Code, 28 U.S.C. 379, deprived the Federal District Court of jurisdiction to stay the proceedings in the state court." 328 U.S. at 253. This Court held (id. at 254-255):

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19 Under the antecedents of section 2283 the lower courts were divided over the question of whether section 1983 amounted to an "implied exception" to the anti-injunction act. Compare Aultman & Taylor Co. v. Brumfield, 102 Fed. 7 (C.C.N.D. Ohio, 1900), appeal dismissed, with costs on authority of counsel for appellants, 22 S. Ct. 938, 46 L. Ed. 1265 (1902), and Mickey v. Kansas City, 43 F. Supp. 739 (W.D. Mo. 1942), with Tuchman v. Welch, 42 Fed. 548, 557-559 (C.C.D. Kan. 1890).

> The District Court erred in holding that the policy of §265 should not be considered impaired by the Emergency Price Control Act ... §205 of the Price Control Act which authorizes the Price Administrator to seek injunctive relief in appropriate courts, including federal district courts, is an implied legislative amendment to §265, creating an exception to its broad prohibition. This is true because §205 authorizes the Price Administrator to bring injunction proceedings to enforce that Act in either state or federal courts, and this authority is broad enough to justify an injunction to restrain state court evictions. But if §265 controls, as the District Court held, the Administrator here could not proceed in the federal court, since there is a proceeding pending in a state court. Since the provisions of the Price Control Act, enacted long after §265, do not compel the Administrator to go into the State courts but leave him free to seek relief in the federal courts, he was not barred by §265 from seeking an injunction to restrain an unlawful eviction (emphasis added).

Porter v. Dicken, thus, held that a federal statute creating a federal cause of action for an injunction, although not referring specifically to injunctions against state court proceedings, was sufficiently broad to authorize injunctions against state court proceedings, and was for that reason excepted from the prohibition of the anti-injunction statute. This rationale would, it seems, apply directly to suits for injunctions brought under Section 1983 against pending state court proceedings where the criteria for injunctive relief set forth in Dombrowski are present. Section 1983, like Section 205(a) of the Price Control Act, authorizes injunctive relief, without referring in terms to injunctions against state court proceedings. Under the rationale of Porter v. Dicken it would seem that "this authority is broad enough to justify an injunction to restrain state court" proceedings.

b. The statutory revision in 1948 does not undermine the rationale of Porter v. Dicken

The statutory revision in 1948 utilizing the words "expressly authorized by Act of Congress" does not undermine the rationale of Porter. See Hart & Wechsler, op. cit. at 1076. "Expressly authorized" does not require reference in specific terms to Section 2283. Amalgamated Clothing Workers v. Richman Bros. Co., 348 U.S. 511, 516 (1955). Nor would it seem to mean that specific

words of authorization to restrain state court proceedins must be included in the statutory grant of equitable power. Otherwise almost all of the earlier recognized statutory exceptions would have been repealed by the 1948 codification. But the Revisor's Notes state that the revision was designed to "restate" and reestablish the existing law as to "exceptions" prior to Toucey.[20] See Hart & Wechsler, op. cit. at 1077. The 1948 codification would seem therefore to reaffirm the reasoning of Porter that the equitable grant of power in a statute like the Civil Rights Act falls with the exceptions of 2283.

This question was considered by this Court in 1955 but not resolved in Amalgamated Clothing Workers, supra. The Court did not reach the question as to whether a statute which in general terms authorizes injunctive relief can be a statute "expressly" authorizing injunctions against state court within the meaning of Section 2283. Since the Amalgamated decision turned on the fact that the grant of equitable relief in the statute there involved was only to the National Labor Relations Board or its officers and not to the petitioner-union, unlike Section 1983 of the Civil Rights Act which permits "any person" to seek the equitable relief authorized, the Court did not reach the question now squarely posed in this appeal.

The interpretative approach developed over the years in analyzing Section 2283 and its predecessor statute would seem to lend considerable support to the conclusion reached by Circuit Judge

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20 The "substance" of the Reviser's notes are quoted in Hart & Wechsler, op. cit. at 1075, as follows:

> And exception as to Acts of Congress relating to bankruptcy was omitted and the general exception substituted to cover all exceptions.
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> The phrase "in aid of its jurisdiction" was added to conform to section 1651 of this title and to make clear the recognized power of the Federal courts to stay proceedings in State cases removed to the district courts.
>
> The exceptions specifically include the words "to protect or effectuate its judgments," for lack of which the Supreme Court held that the Federal Courts are without power to enjoin re-litigation of cases and controversies fully adjudicated by such courts. (See Toucey v. New York Life Insurance Co., . . .).
>
> Therefore the revised section restores the basic law as generally understood and interpreted prior to the Toucey decision. Changes were made in phraseology.

Rives in his dissenting opinion below that:

> "The principles rationally extrapolated from the cases creating express exceptions to the prohibition of section 2283 derive content from the concrete situations which gave rise to them. Where a specific, limited and clearly delineated substantive right has been conferred by Congress the courts have found an express exception to section 2283. The express exception is the necessary concomitant of the need to vindicate federally created rights and is entirely consistent with the history of section 2283" (App. 63).

In the deepest sense, therefore, the concept underlying the cases defining the "exception" doctrine reflects again the comity principles governing the dual systems. Where it is necessary to exercise federal power to "vindicate" federal rights, the Courts have found an "exception" to the anti-injunction statute.[21] In this spirit, where, as here, the "need to vindicate" most "precious" federal rights is involved, cf. Dombrowski v. Pfister, supra at 486, a holding that injunctive relief based upon 42 U.S.C. 1983 which meets the criteria of Dombrowski, is an "express exception" to Section 2283, is in Judge Rives' words, "entirely consistent with the history of section 2283" (App. 63).

3. Injunctive relief against state proceedings which meet the criteria of Dombrowski was one of the "statutory purposes sought to be achieved" by the legislative enactors of Section 1983.

A powerful consideration reenforcing the conclusion that 2283 does not bar the injunctive relief here sought flows from an examination of the Reconstruction legislation which grounds the invocation of federal equity power in this case.

In a recent decision holding that an injunction brought pursuant to a provision of the 1964 Civil Rights Act, Section 203(a)-(c), is an exception to the 2283 bar, the Fifth Circuit pointed out

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21 For example, the federal courts in the Fifth Circuit have previously recognized this exception to section 2283 based on a "specific limited and clearly delineated substantive right . . . conferred by Congress." In United States v. Wood, 295 F.2d 772 (5 Cir. 1961) the government sought injunctive relief pursuant to 42 U.S.C. Section 1971 against a state criminal proceeding. The Fifth Circuit granted that relief noting that it was appropriate where state court proceedings are used as "instruments for the deprivation of constitutional rights." 295 F.2d at 781. And in Dilworth v. Riner, 343 F.2d 226 (5 Cir. 1965) it was held that Section 203(a)-(c) of the 1964 Civil Rights Act was also an exception to the 2283 bar.

that perhaps the soundest guiding principle for determining "express authorization" within the meaning of 2283 is consideration of "the statutory purpose sought to be achieved" by the congressional enactment. Dilworth v. Riner, 343 F.2d 226 (5 Cir. 1965).[22]

Applying this test to the statutory provision for equitable relief here involved, Section 1983 of Title 42 of the United States Code[23] the conclusion is inescapable that the "statutory purpose sought to be achieved" by the congressional enactors involved precisely the type of assertion of national power found in the invocation of federal injunctive power against state court proceedings which harass and intimidate citizens in the exercise of their fundamental rights.

Section 1983 is derived, almost without change, from Section One of the 1871 "Act to Enforce the Fourteenth Amendment".[24] As Mr. Justice Fortas has recently stated for the Court, "The purpose and scope of the 1866 and 1870 enactments must be viewed against the events and passions of the time" United States v. Price, 383 U.S. 787, 803. Any examination of the legislative debates surrounding the enactment of these measures reveals the accuracy of a recent historical conclusion that "in 1870, measures to preserve the Negro's constitutional rights were deperately needed, and Congress responded with

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22 In arguing that 1983 adequately authorizes a federal court to enjoin a state court proceeding Professor Moore suggests a similar inquiry:

> In a suit to redress private rights, how definite must the statutory authorization be to bring the case within the first exception to section 2283? The Civil Rights Act provision for a "suit in equity" to redress the deprivation of rights has been held to authorize a federal court to enjoin state court proceedings [citing Cooper and Tribune]. On the other hand provision in the anti-trust acts for injunctive relief in a private suit, is not an authorization for the federal court to enjoin a state court from proceeding with a suit over which it has jurisdiction, even though some of the matters, to be there adjudged are within the compass of the federal action. The differentiating factor is the underlying purpose of the statutory provision for equitable or injunctive relief. (Emphasis added.)

23 Section 1983 of Title 42 of the United States Code reads as follows:

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation

(footnotes 23 and 24 continue on next page)

the passage of the Enforcement Acts of 1870 and 1871" Swinney, Enforcing the Fifteenth Amendment, 1870-1877, 28 Journal of Southern History 202, 218 (1962). Section 1983 was one of the principal remedies forged in the intensity of congressional determination to assert the supremacy of national power in the protection of the fundamental rights of the race of newly freedmen. Monroe v. Pape, 365 U.S. 167.[25] The Reconstruction majorities were determined to go, as a recent commentator has put it, "to the limits of Constitutional power", Note, 21 Rutgers L. R., supra, at 109, to create effective national instrumentalities of power to protect the fundamental constitutional rights guaranteed to the new citizens. The sponsor of the legislation, Representative Shellabarger of Ohio placed the question of the overriding nature of "the federal role in the establishment and vindication of fundamental rights", cf. United States v. Price, 383 U.S. at 806, 807, in sharp and direct words.

> "[T]o say that Congress can do no such thing as make any law so enforcing these rights,nor open the United States courts to enforce any such laws, but must leave all protection and law-making to the very states which are denying the protection, is plainly and grossly absurd. . . .
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> . . . . .
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> If, after all this transcendent profusion of enactment in restraint of the States and affirmative conferment of

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(footnote continued from preceding page)
of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

24 Act of April 20, 1871, ch. 22 Section 1, 17 Stat. 13.

25 See, for example, the discussion of the significance of the panoply of Reconstruction remedial legislation by then Circuit Judge, now Mr. Justice Marshall, in his dissenting opinion in People v. Galamison, 342 F.2d 255, 275, 283 (2d Cir., 1964):

> "The legislators of the Reconstruction Era saw the federal courts as a necessary and perhaps the most appropriate forum for the protection of federal rights. This conception was expressed in, for example, the Act of April 9, 1866, 14 Stat. 27, Sec. 3 of which was the first step toward the present Section 1443; the Act of February 5,1867, 14 Stat. 385, the habeas corpus statute (now 28 U.S.C. Sec. 2241(c)(3) providing a federal forum to try a state prisoner's claim that he is being deprived of liberty in violation of the Constitution, see Fay v. Noia, 273 U.S. 391, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963); the Act of April 20, 1871, 17 Stat. 13, the antecedent to sections 1983 and 1985 giving the federal courts original jurisdiction

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power on Congress, the States shall remain unrestrained, the complete, sole arbiters of power, to defend or deny national citizenship -- to make laws abridging or not abridging, to protect or to destroy . . . these United States citizens as the State may please, and the United States must stand by a powerless spectator of the overthrow of the rights and liberties of its citizens, then not only is the profusion of guards put by the Fourteenth Amendment around our rights a miserable waste of words, but the Government is itself a miserable sham, its citizenship a curse, and the Union not fit to be."26

The Republican majority which enacted the Shellabarger proposal into law emphasized over and over again their conception that this new weapon of federal enforcement they were creating, the 1983 cause of action for relief, cf. Dombrowski v. Pfister, supra, 490, was designed to effectuate federal supremacy over any state proceedings which interfered with fundamental rights.[27]

(footnote continued from preceding page)
to remedy, either in a civil or criminal action, claimed violations of federal constitutional rights, see Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961).

26 Cong. Globe, 42d Cong., 1st Sess. App. 68, 69 (1871).

27 See for example these comments in the debates:

"We Republicans mean to go on until we shall give full force and effect to every provision of the American Constitution. . . .

Sir, a Government that cannot protect the humblest man within its limits, that cannot snatch from oppression the feeblest woman or child, is not a Government. It is wanting in the vital attribute of government. The power to protect its people inheres indestructibly in all Governments, and that frame of constitution or laws which does not provide for it fails to establish government. Id. at 339.

To argue thus [that the United States cannot intervene to protect basic rights] is to violate every sound principle of legal and logical interpretation, and to suppose a great wrong without a remedy in our political system. Id. at 389.

Am I to abandon the attempt to secure to the American citizen these rights, given to him by the Constitution . . . or, sir, am I to resort to the last extreme remedy of the Constitution? . . .

I conclude . . . by saying that in my opinion Congress has power to legislate for the protection of every American citizen in the full, free, and undisturbed enjoyment of every right, privilege, or immunity secured to him by the Constitution, and that this may be done --

First. By giving him a civil remedy in the United States courts for any damage sustained in that regard. Id. at 477.

If such things can be without a remedy applied if need be by the national arm, then are we little more than a bundle of sticks, but not a nation. Believing that we are a nation, I cannot doubt the power and the duty of the national Government."

But with even greater relevance to the present issue before the Court, the legislative debates reveal an intense concern that this new remedy for asserting federal primacy in the protection of fundamental rights be available to meet the ever present problem of the deprivation of rights accomplished in whole or part through the abuse and perversion of state court machinery in the southern states.[28]

That this was one of the "statutory purposes" of Section 1983 stands out clearly in the exhaustive legislative history of the provision analyzed carefully in both the majority and dissenting opinions in Monroe v. Pape, 365 U.S. 167. In Mr. Justice Douglas' majority opinion for the Court one question emerges time and again in his discussion of the history of the provision. Central among the

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28 See, for example, these comments in the debates: Cong. Globe, 42d Cong., 1st Sess. App. 78 (1871).

> If the jurors of South Carolina constantly and as a rule refuse to do justice between man and man where the rights of a particular class of its citizens are concerned, and that State affords by its legislation no remedy, that is as much a denial to that class of citizens of the equal protection of laws as if the State itself put on its statute-book a statute enacting that no verdict should be rendered in the courts of that State in favor of this class of citizens. Id. at 334.
>
> If the State Legislature pass a law discriminating against any portion of its citizens . . . it will be admitted that the State does not afford the equal protectection. But if the statutes show no discrimination, yet in its judicial tribunals one class is unable to secure that enforcement of their rights and punishment for their infraction which is accorded to another . . . the State has not accorded to all its citizens the equal protection of the laws. Ibid.
>
> Plausibly and sophistically it is said the laws of North Carolina do not discriminate against them; that the provisions in favor of the rights and liberties are general; that the courts are open to all; that juries, grand and petit are commanded to hear and redress without distinction as to color, race, or political sentiment.
>
> But it is a fact, asserted in the report, that of the hundreds of outrages commited upon loyal people through the agency of this Ku Klux organization not one has been punished. This defect in the administration of the laws does not extend to other cases. Vigorously enough are the laws enforced against Union people. They only fail in efficiency when a man of know Union sentiments, white or black, invokes their aid. Then Justice closes the door of his temples.

concerns of the Reconstruction Congress which enacted the statute were the deprivations of rights of citizens which occurred in the course of court proceedings. The misuse of state court proceedings, and in particular criminal proceedings was at the very heart of the breakdown in constitutional protection which the Ku Klux Klan Act [the statutory predecessor of 1983] was designed to provide federal remedies to meet. Over and over again in setting forth the legislative history of the statute the Court's opinion emphasized that the misuse of the judicial proceedings in the former slave holding states occupied the principal concern of the enactors. See, for example, 365 U.S. 174, n. 10, 178, 179.[29]

The dissenting opinion of Mr. Justice Frankfurter likewise highlights the congressional concern with violations of constitutional rights committed through the misuse of state judicial proceedings.[30] As Justice Frankfurter points out the earlier Act upon which Section 1 of the 1870 Act was based (the predecessor to 1983) "had as its primary objective the effective nullification of the Black Codes, those statutes of the Southern legislatures which had so burdened and disqualified the Negro so as to make his emanicipation illusory." 365 U.S. at 225. The main thrust of the Black Codes was the utilization of a wholly discriminatory system of criminal laws and criminal proceedings designed to restore the freedman to his ante-bellum status.[31] It is understandable therefore that there should have been deep Congressional concern with the misuse of state court proceedings as "instruments for the deprivation of

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29 Mr. Justice Douglas in his recent dissenting opinion in Pierson v. Ray, ____U.S._____, 87 S.Ct. 1213 (1967) gave additional evidences of the legislative purpose to meet problems posed by misuse of the state judicial machinery.

30 It should be borne in mind that the difference between the majority and the dissent in Monroe had nothing to do with whether "color of law" in the statute included judicial proceedings. Both opinions assume this. The difference lies in the further sweep of the "color law" concept beyond formal organs of law.

31 See for example 1 Fleming Documentary History of Reconstruction, 273-311; 2 Commager, Documents of American History, 2.7; Randall, The Civil War and Reconstruction, all cited in Justice Frankfurter's opinion in Monroe v. Pape, at 225, Fn. 35.

constitutional rights." Cf. United States v. Wood, supra.[32]

There may be many complicated questions as to the scope and breadth of the concept of "color or law" in the Reconstruction legislation. Cf. Williams v. United States, 341 U.S. 97; Screws v. United States, infra; United States v. Classic, 313 U.S. 299; and United States v. Price, supra. But there is little debate as to whether "color of law" includes "color" of judicial proceedings or

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32 It seems clear that Section 1983 was designed to provide a civil remedy for violation of fundamental rights occurring during the course of state criminal trials. The criminal equivalent of Sec. 1983 is now 18 U.S.C. 242. Under this statute prosecutions may be brought for deprivations of civil rights occurring in connection with state trials, like trumped-up proceedings. E.g., Culp v. United States, 131 F.2d 93 (C.A. 8, 1942); Brown v. United States, 204 F.2d 247 (C.A. 6, 1953); Screws v. United States, 325 U.S. 91, 126 (1945) (Rutledge, J., concurring). This was clearly intended by Congress. See Monroe v. Pape, supra. And it is perfectly clear that sec. 1983, enacted in 1871, was intended to reach the same conduct which is punishable under 18 U.S.C. 242.

Thus, Congressman Shellabarger, Chairman of the House Select Committee which drafted the Act of April 20, 1871, now sec. 1983, said that (as described in Flack, The Adoption of the Fourteenth Amendment, at p. 228 (1908):

> [T]he first section of the proposed bill [the Act of 1871] was modeled upon the second section of the Civil Rights Bill of 1866, the only difference being that this one provided for civil remedy where the bill of 1866 provided for criminal proceeding. . . . (Emphasis added)

Similarly, in Monroe v. Pape, supra, Mr. Justice Frankfurter, dissenting, said (365 U.S. at 212-213, n. 18):

> Mr. Shellabarger, Chairman of the House Select Committee which authored the Act of April 20, 1871, whose first section is now 1979 [of the Revised Statutes, now section 1983 of Title 42] reported to the House that that section was modeled upon the second section of the Act of April 9, 1866, 14 Stat. 27, and that the two sections were intended to cover the same cases, with qualifications not relevant here. Cong. Globe, 42d Cong., 1st Sess., App. 68. See also id., at 461. The 1866 provision had been re-enacted, substantially and in form, by the seventeenth and eighteenth sections of the Act of May 31, 1870, 16 Stat. 140, 144 and the 1874 revision of the provision was in turn patterned on the present section 1979. See Scews v. United States, 325 U.S. 91, 99-100. The sections have consistently been read as coextensive in their reach of acts "under color" of state authority. (Emphasis added)

In short, since the criminal provisions dating from the Act of 1866 were clearly designed to reach deprivations of right occurring in state courts, and since section 1983 is the civil equivalent of the criminal provisions, a strong reason exists for thinking that Congress intended the civil remedy to reach as far as injunctions against state court proceedings.

judicial officers. Cf. Ex Parte Virginia, 100 U.S. 339. Mr. Justice Frankfurter, for example, points out that in outlining his understanding of the statute involved President Johnson in his veto message described the statute in this fashion:

> "It means a deprivation of the right itself, either by the State judiciary or the State Legislature." Emphasis added. Cong. Globe, 39th Cong. 1st Sess. 1680, cited in 365 U.S. at 226.

The objections to the legislation were phrased in terms of criticizing the federal law as penalizing "state judges" acting under color of state laws. Cong. Globe 42 Cong. 1st Sess., 365. The evils which the statute are directed against include situations when in a State's "judicial tribunals one class is unable to secure that enforcement of their rights and punishment for their infraction which is accorded to another," Cong. Globe, 42 Cong. 1st Sess. App. 315, or where "the courts of the . . . States fail and refuse to do their duty in the punishment of offenders against the law" id. at App. 179, or in which "a class of officers charged under the laws with their administration . . . refuse to extend [their] protection" id. at 334.

The majority opinion of Mr. Justice Douglas and the dissenting opinion of Mr. Justice Frankfurter in Monroe are filled with instances of this deep legislative concern. The exhaustive legislative history analysis in both Monroe opinions thus proves beyond any possible question that one of the central objectives of the enacting Congress was to provide remedies for the widespread misuse of state judicial proceedings which resulted "in the deprivation of constitutional rights." Cf. United States v. Wood, supra.[33]

On the basis of this examination of the "statutory purpose" underlying the enactment of 1983 we would suggest that, as the Court has said recently in an analogous situation in revitalizing the criminal remedies fashioned in the Reconstruction Period, "it would be

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33 Cf. for example Professor Amsterdam's description of the previous debates of the 39th Congress of 1866:

> It is impossible to read [the debates]. . . without concluding that the federal legislators were intensely aware of the hostility and anti-union prejudice of the Southern state courts and of the use of state courts proceedings to harass those whom the Union had an obligation to protect. Amsterdam, Criminal Prosecutions Affecting Federally Guaranteed Civil Rights, 113 U.Pa. L. Rev. 793 (1965).

strange, indeed, were this Court to revert to a construction of the Fourteenth Amendment which would once against narrow its historical purpose--which remains vital and pertinent to today's problems." United States v. Price, 383 U.S. 787. Section 1983 was designed as a principal remedy in the struggle for federal primacy in the protection of the new national rights of freedom and equality for the race of freedmen.[34] As the United States said in its Brief Amicus Curiae submitted in the Baines case in the Fourth Circuit in support of Appellants' position:

> ". . . § 1983 was one of the weapons forged in the Reconstruction Era to vindicate the Fourteenth Amendment. It should be construed in light of this broad remedial purpose. And, in this view, the federal courts, it might be thought, ought to be able to consider the equitable merits of a claim under section 1983 and to grant the relief sought if it appears warranted under general equitable principles. If section 2283 applies, they will apparently be unable to do so."[35]

A decision so interpreting the thrust of Section 1983 in accordance with the original intentions of the enactors would reflect the true sense of the principles of comity embodied in 2283 for as this Court has so recently said in United States v. Price, "Today, a decision interpreting a federal law in accordance with its historical design, to punish denials by state action of constitutional rights of the person can hardly be regarded as adversely affecting 'the wise adjustment between State responsibility and national control'" 383 U.S. at 806, 807.

In the spirit of this Court's words in Price, we suggest that "today" a decision interpreting Section 1983 as authorizing a federal injunction against a state court proceeding which "unaffected by the prospect of its success or failure" has a "chilling effect upon the exercise" of fundamental rights, Dombrowski v. Pfister at 487, would

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34 See generally, Kinoy, The Constitutional Right of Negro Freedom, 21 Rutgers Law Review 387 (1967).

35 The Department of Justice filed a Memorandum for the United States as Amicus Curiae in Chase v. Aiken, #9084, and Chase v. McCain, #9081, September, 1966, on appeal from the Western District of Virginia District Court to the Court of Appeals for the Fourth Circuit, in which the government discussed the question of whether Section 1983 was an exception to the Section 2283 bar. See Baines v. Danville, supra.

interpret the statute "in accordance with its historical design", a design which "remains vital and pertinent to today's problems." United States v. Price, supra.

4. This Court's recent opinion in City of Greenwood v. Peacock indicates that 2283 does not bar injunctive relief in this case

Subsequent to the remand in this case, 381 U.S. 745 (1965), this Court has in effect already spoken to the question as to whether "28 U.S.C. Sect. 2283 bars a federal injunction in this case", 381 U.S. 745, supra. In denying the remedy of removal under the civil rights removal statute, 28 U.S.C. 1443, which was sought to be invoked in City of Greenwood v. Peacock, 384 U.S. 808 (1966), Mr. Justice Stewart wrote for the Court:

> "But there are many other remedies available in the federal court to redress the wrongs claimed by the individual petitioners in the extraordinary circumstances they allege in their removal petitions. If the state prosecution or trial on the charge of obstructing a public street or on any other charge would itself clearly deny their rights protected by the First Amendment, they may under some circumstances obtain an injunction in the federal court. See Dombrowski v. Pfister, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22." 384 U.S. at 829. (Emphasis supplied.)

This opinion, written after the Cameron remand, would seem to answer conclusively the threshold question posed in that remand. If a Dombrowski injunction is a "remedy available in the federal courts to redress the wrongs claimed" by the petitioners in Peacock, 384 U.S. at 829, then clearly 2283 is no bar to a Dombrowski injunction against a pending state court "prosecution or trial", 384 U.S. at 829. This must follow since the "wrongs claimed" by the Peacock petitioners involved contentions concerning the pending trials. And in Peacock, the federal removal proceedings, for which a Dombrowski injunction is suggested by the Court as a possible alternative remedy, were of necessity, commenced after the institution of the state prosecutions.

The analysis of the pending state proceedings developed in the dissenting opinion of Mr. Justice Douglas, joined in by Chief Justice, Mr. Justice Brennan, and Mr. Justice Fortas, emphasizes the inevitable inference that the entire Court, both in the majority and dissenting opinions, joined in suggesting that the "wrongs claimed by"

the petitioners involving the state court trials were minimally subject to federal injunctive power, if the criteria of Dombrowski were met. Thus the dissenting Justices analyzed the claims set up in the Peacock removal petitions in this manner:

> "Continuance of an illegal local prosecution, like the initiation of a new one, can have a chilling effect on a federal guarantee of civil rights. We said in NAACP v. Button, 371 U.S. 415, 433, respecting some of these federal rights, that '[t]he threat of sanctions may deter their exercise almost as potently as the actual application of sanctions.' In a First Amendment context, we said:
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> 'By permitting determination of the invalidity of these statutes without regard to the permissibility of some regulation on the facts of particular cases, we have, in effect, avoided making vindication of freedom of expression await the outcome of protracted litigation. Moreover, we have not thought that the improbability of successful prosecution makes the case different. The chilling effect upon the exercise of First Amendments rights may derive from the fact of the prosecution, unaffected by the prospects of its success or failure.' Dombrowski v. Pfister, 380 U.S. 479, 487. The latter case was a suit to enjoin a state prosecution. The present cases are close kin. For removal, if allowed, is equivalent to a plea in bar granted by a federal court to protect a federal right." At p. 846.

The significant area of difference in analysis between the dissenting opinion and the majority opinion on this question was thus whether the remedy of removal was available. There was no disagreement as to whether Dombrowski would authorize a federal injunction against the pending state proceedings, if the criteria for injunctive relief set forth in that opinion were met. Both Mr. Justice Stewart's opinion for the Court, and Mr. Justice Douglas' opinion for the dissenting four Justices assume the availability of a Dombrowski injunction to meet the problems presented by the Peacock petitioner's contentions concerning the pending state court proceedings.[36]

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36 In Peacock, the majority of the Court seemed concerned with the practical "result", 384 U.S. at 832, of holding that the removal remedy was available under the circumstances of that case. Apart from the propriety of such considerations, cf. the dissenting opinion, 384 U.S. at 853 and Tennessee v. Davis, 100 U.S. 257, 271, 272, it is of course clear that the Dombrowski injunctive remedy, presents none of the "practical" problems which concerned the majority of the Court in Peacock. It is an equitable remedy addressed to the sound discretion of the federal court and unlike the removal remedy does not involve a preliminary automatic loss of state court jurisdiction which results from the mere act of complying with the procedural requirement of the removal statute. Cf. for example, Allman v. Hanley, 320 F.2d 559 (5th Cir., 1962); Hopson v. North American Insurance Co., 71 Idaho 461, 233 P.2d 799; State ex rel Allis Chalmers Manufacturing Co. v. Boone Circuit Court, 227 Ind. 327, 86 N.E.2d 74; Brown v. Wechsler

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This recognition of the premises implicit in Peacock emphasizes the gravity of the situation were the Court now to hold that 2283 bars a Dombrowski injunction against a pending state court proceeding. Civil rights removal, the 1983 remedy, and federal habeas corpus were the principal weapons of federal power created by the Reconstruction Congresses to protect the newly granted constitutional rights of the race of freedmen. See generally Amsterdam, Criminal Prosecutions Affecting Federally Guaranteed Rights, 113 U.Pa. L.Rev., 793. By a narrow five to four vote this Court has recently declined to reactivate on any significant level the civil rights removal remedy. City of Greenwood v. Peacock, supra. If the Court were to now reconsider the premise which underlies the Peacock majority opinion and hold that the 1983 injunctive remedy is equally unavailable to protect citizens who face the precise problems for which the Reconstruction legislation was designed, cf. United States v. Price, supra, to a large measure "the federal role in the establishment and vindication of fundamental rights", United States v. Price,at p. 806, will be abandoned. This would be a fateful decision for the Court and for the country.

In Price the Court took the occasion to remind the nation that this federal role is "today . . . pervasive" and "intense", 383 U.S. 806. It may be helpful to consider the significance of this "federal role", which the Reconstruction legislation was designed to implement, within the context of "today's problems", United States v. Price, at 806. A system of law must provide remedies to vindicate rights or its fundamental premises fail, Marbury v. Madison, 1 Cranch 137 (1803). Where, increasingly states not yet committed to the full implications of the national promises of freedom and equality to the Negro embodied in the Wartime Amendments, have turned from overt forms of resistance -- nullification, interposition, massive resistance, to the more sophisticated reliance upon the utilization of state criminal machinery to harass and intimidate citizens, black and white who

(Footnote continued from preceding page)
et al., 135 F.Supp. 622 (D.C. 1953); Lowe v. Jacobs, 243 F.2d 432 (5th Cir., 1957); Dienstig v. St. Paul Fire and Marine Insurance Co, 164 F.Supp. 603 (S.D.N.Y., 1957); Shenandoah Chamber of Progress v. Frank Associates, Inc., 95 F.Supp. 719 (E.D. Pa., 1950); see generally, 25 A.L.R. 2d 1045.

seek to implement the constitutional right of freedom, see for example the illuminating opinion of Circuit Judge Wisdom in Cox v. Louisiana, supra, the primacy of the "federal role" remains crucial and legal remedies must be available for the vindication of these rights.[37] A decision "today . . . interpreting" Section 1983 "in accordance with its historical design", cf. United States v. Price, supra, and reaffirming the promise implicit in Peacock that at a minimum a Dombrowski inunction invoking the authority created in the 1871 statute remains available as a remedy against state prosecutions which interfere with fundamental rights, see City of Greenwood v. Peacock 384 U.S. at 829, would reinforce the role of "the independent federal judiciary" as "guardians"of the basic liberties of the people. Chapman v. State of California, supra, at p.826

On the other hand, the emasculation and virtual elimination of the 1983 injunctive remedy where the criteria of Dombrowski are met would not only fly in the face of this Court's promise in Peacock.

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37 See Boyer, Federal Injunctive Relief, a Counterpoise Against the Use of State Criminal Prosecutions Designed to Deter the Exercise of Preferred Rights, supra,at p. 58:

> "The increasing use of state criminal statutes and proceedings as a device to harass and deter the exercise of fundamental constitutional rights in efforts to obtain equality for Negro citizens requires a vigorous affirmation of the existence of federal equity to protect fundamental federally created rights. Federal courts in the South would have to close their eyes to existing realities not to notice that many of the cases in the state courts are the direct consequence of racial conflict."

See also United States Commission on Civil Rights, Law Enforcement, a Report on Equal Protection in the South (1965); and Lusky, Racial Discrimination and the Federal Law; a Problem in Nullification, 63 Columbia L.R. 1163 (1963).

It would say to the nation, and in particular to the descendants of the race of freedmen, that once again the solemn commitments of primary national responsibility for the fulfillment of the now one hundred year old promises of the Wartime Amendments are in danger of being eroded and eventually abandoned. Neither the "historical design" of the postwar legislation nor its critical importance in light of "today's problems", United States v. Price, supra, should permit such a conclusion.[38]

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38 See for example, Boyer, supra at p. 60:

> "If the federal courts fail to act under such circumstances, this would, in effect, eliminate any effective judicial forum for the prompt and decisive protection of these rights. With the ever-increasing demand of Negro citizens for equality and freedom from legal tyranny, the elimination of an effective forum would create a constitutional crisis of grave dimensions. The absence of any tribunal of original jurisdiction prepared to enforce constitutional rights would threaten the fundamental assumption underlying the national commitment to a theory of government which encourages and permits social progress and change to take place within the channels of peaceful democratic expression."

S CLUBS OF AMERICA [illegible] VS. KATZENBACH, NICHOLAS DE B. [illegible] DISTRICT [illegible]
UMBIA [illegible]

Please Retain Original Order

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

W.E.B. DUBOIS CLUBS OF AMERICA ET AL

V.

NICHOLAS DE. B. KATZENBACH ET AL

A F F I D A V I T

STATE OF NEW YORK)
COUNTY OF NEW YORK } ss.

PERSONALLY CAME AND APPEARED

Ivanhoe Donaldson

WHO, AFTER BEING DULY SWORN, DECLARED AND SAID:

That he is the Director of the Student Nonviolent Coordinating Committee, located at 100 Fifth Avenue, New York, New York.

That, in general, this organization is dedicated to the achievement of racial equality and justice for all Americans. That by means of peaceful demonstrations, the publication and/or distribution of appropriate literature, picketing, educational meetings, conferences, and participation in public discussion, it attempts to achieve its avowed purposes.

That the fulfillment of the aims and purposes of the Student Nonviolent Coordinating Committee requires the active participation of many persons of good standing in their communities throughout the country, as well as the monetary contributions of otheres who do not participate actively in its programs, but who are willing to lend their financial support to them.

That affiant, as N.Y. Director of the Student Nonviolent Coordinating Committee, knows from his personal experience in that capacity that there is a general reluctance on the part of

a large portion of its participants and contributors to be identified with the civil rights movement because of the fear of being called communist or subversive, or of being associated with a group which has been so labeled, regardless of the merits of the charges.

That affiant believes that the general climate of fear in the nation of being associated with movements which have been so labeled, 1) has had a substantial intimidating effect on many who would otherwise be disposed to participate in or contribute to the activities of the Student Nonviolent Coordinating Committee; 2) has deterred many supporters from permitting their names to be used by or associated with it in any manner, and 3) has seriously inhibited the assistance of many sympathetic persons who fear community displeasure, adverse publicity, and/or economic reprisals.

Affiant believes that the pending proceeding before the SUBVERSIVE ACTIVITIES CONTROL BOARD against the W.E.B. DUBOIS CLUBS OF AMERICA is the most recent instance of governmental activity designed to taint the civil rights movement with unfounded charges, implications or inferences of communist and/or subversive involvement.

That the extensive publicity relating to the petition against the W.E.B. DUBOIS CLUBS OF AMERICA filed by the Attorney General is a most recent graphic example of the type of governmental activity which has caused the aforesaid general climate of fear responsible for a substantial decline of active and financial support to all civil rights organizations as well as a serious inhibition of all of their programs and policy implementation, all to their irreparable injury.

That all of the above will continue unless this Court acts to restrain the proceedings against the plaintiff organization presently pending before the SACB.

That as an organization dedicated to the achievement of fundamental constitutional rights and freedoms, the Student Nonviolent Coordinating Committee has nevertheless sufferred or is threatened with imminent irreparable injury as a direct result and consequence of the activities of the

"Communist-front provisions" of the McCarran Act. Although it may not necessarily share all of the expressed aims of the plaintiff organization, it does support, among other things, its opposition to the War in Viet Nam. But of even more importance, it supports the right of all Americans to dissent from the policies, domestic or foreign, of the government; a right that is seriously impeded and frustrated by the very institution and continuation of the DuBois Clubs proceedings now pending before the SACB.

Wherefore, it is respectfully requested that this Court temporarily enjoin the defendants herein from conducting any further proceedings against the organization plaintiff until the eventual disposition of this action.

Ivanhoe Donaldson

Ivanhoe Donaldson

Sworn to before me this

9 day of August, 1966.

Notary Public

NICHOLAS ALDORISIO
Notary Public, State of New York
No. 41-0036315
Qualified in Queens Co.
Comm. Expires March 30, 1967.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

W.E.B. DUBOIS CLUBS OF AMERICA ET AL

v.

NICHOLAS D. B. KATZENBACH ET AL

A F F I D A V I T

STATE OF NEW YORK _____)
COUNTY OF NEW YORK _____) ss:

LINCOLN LYNCH, BEING DULY SWORN OPPOSES AND SAYS:

1. I am the Associate National Director of the Congress of Racial Equality located at 38 Park Row in the City and State of New York.

2. The Congress of Racial Equality is a national organization with chapters in many cities throughout the country and with many thousands of members in various parts of the United States.

3. The Congress of Racial Equality is a national organization devoted to the development of equal rights in the social, political and economic spheres of the United States for Negroes. Its reputation is that of a vigorous organization frequently developing action programs to promote these concerns of the Congress of Racial Equality.

4. C.O.R.E. as the Congress of Racial Equality is commonly known because of its vigorous espousal of its program has drawn the emnity of many people who are not willing to grant the Negro political, economic and social equality in the United States. In the course of doing this it has

Less common for C.O.R.E., some of its chapters or some of

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its leading members to be called communist or associate of communists, or communist sympathizers, communist lovers, or of all varity of other phrases having similar meanings designed to harm the work of the Congress of Racial Equality.

5. It is no secret that in some parts of the United States, not only limited to the South but perhaps more prevalent there, the use of the term communist is designed as an epithet to condumn some activity not in fact associated with communism nor in any way sympathetic to Russian or Chinese communists, communism or any variation thereof. We must not degenerate into an era that brought great harm to the interest of all people mainly the McCarthy era inwhich the epithet communist was used and as a result people began frightened and intimidated from joining activities. We have come out of that era, now we must not descend back in to it.

6. C.O.R.E. as part of its program believes in freedom of speech and freedom of association for all persons. All should have the right to espouse a desire to hold and to make those beliefs known to all people. We desire that for ourselves and for all others whether they be people who agree or disagree with us.

7. I have very little knowledge of the DuBois Clubs except that publicly they have espouse the cause of racial equality. The attacks made upon them do not serve the cause of democratic society, of political and economic and social freedom and only serves the interest of persons who are desirous of preventing the Negroes and other minorities/from not achieving equality from receiving the rights due under the United States Constitution.

8. No useful purpose can be served by attempting to suppress the DuBois Society in any way except the purpose of pre-

venting free discussion & free debate by all types of

persons in this country. To put a lable epithet upon an organization, as we know from our own experience at C.O.R.E., is to hurt the organization in its efforts to increase its membership and accordingly increase its activities throughout the country. In other countires with which the United States is friendly, the term communist may not be such an epithet such as in England, France or Italy where communists parties and organizations operate openly and legally. But in the United States the use of this term is not for descriptive purposes but for derogatory purposes and is meant to harm the particular organization involved and in fact does harm the organization amongst the more timid people who are affected by the use of these epithet.

Accordingly, we submit this affidavit in support of the petition herein made on behalf of the DuBois Clubs sworn to before me this 12th day of August, 1966.

Lincoln Lynch

Lincoln Lynch
Associate National Director
Congress of Racial Equality
38 Park Row
New York 38, New York

Sworn to this 12th
day of August 1966
Malcolm B. Rosow

MALCOLM B. ROSOW
NOTARY PUBLIC, State of New York
No. 30-3383275
Qualified in Nassau County
Cert. filed in New York County
Commission Expires March 30, 1967

Carl Raeder

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

W.E.B. DuBOIS CLUBS OF AMERICA, 954 McAllister Street, San Francisco, California; BROOKLYN DuBOIS CLUB, 377 Bergen Street, Brooklyn, N.Y.; CHICAGO WESTSIDE DuBOIS CLUB, 2908 W. Madison Street, Chicago, Illinois; SAN FRANCISCO CITYWIDE DuBOIS CLUB, 150 Page Street, San Francisco, California; HUGH FOWLER, 954 McAllister Street, San Francisco, California; TERENCE HALLINAN, 1830 Fell Street, San Francisco, California; JOSE CRISTORICCI, Room 626, 160 Fifth Avenue, New York, N.Y.; DONNA ALLEN, 3306 Ross Place, N.W., Washington, D.C.; REV. JAMES BEVEL, 8407 Kimbark Street, Chicago, Illinois; REV. WILLIAM S. COFFIN, 66 Wall Street, New Haven, Conn.; DAVE DELLINGER, 5 Beekman Street, New York, N.Y.; RALPH DI GIA, 5 Beekman Street, New York, N.Y.; FRANK EMSPAK, 420 W. Washington Street, Madison, Wisconsin; PROF. ROBERT J. HAVIGHURST, 5844 Stony Island Avenue, Chicago, Illinois; PROF. STAUGHTON LYND, 26 Court Street, New Haven, Conn.; JOHN LEWIS, c/o SNCC, 360 Nelson Street, Atlanta, Georgia; CARL OGLESBY, 208 McKinley Street, Ann Arbor, Michigan; REV. JOSEPH SITTLER, 4833 South Kimbark Street, Chicago, Illinois; ELIZABETH SUTHERLAND, c/o SNCC, 100 Fifth Avenue, New York, N.Y.; NORMAN THOMAS, 112 East 19th Street, New York, N.Y.; DAGMAR WILSON, 1406-29th Street N.W., Washington, D.C.,

Plaintiffs,

-against-

NICHOLAS De B. KATZENBACH, Attorney General of the United States, Department of Justice, Washington, D.C.; JOHN M. MAHAN, Chairman, and THOMAS J. DONEGAN, FRANK KOWALSKI, LEONARD L. SELLS and EDWARD C. SWEENEY, all members of the Subversive Activities Control Board, 811 Vermont Avenue, N.W., Washington, D.C.,

Defendants

COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF

Plaintiffs, for their verified complaint, allege:

1. PARTIES

A) Plaintiffs

1. Plaintiff, W.E.B. DuBOIS CLUBS OF AMERICA, known hereinafter as the DuBois Clubs, is an unincorporated membership association of young Americans, men and women, of all races and religions, between the ages of 14 and 35, the majority of whom are of college age. Formed in San Francisco, California, in June of 1964, it was named after Dr. W.E.B. DuBois, the Negro humanitarian, scholar, and founder of the National Association for the Advancement of Colored People. Its national office and main place of business is situated in San Francisco, California.

The primary objective of the DuBois Clubs is to contribute toward the building of a society whose material benefits are available on the basis of need, not privilege, where every person will have a voice in government without regard to race, creed, religion or economic status, where education for all is encouraged and paid for by the government, where no one who wants to work is idle and where people can plan their future free of the threat of war. The DuBois Clubs believe and advocate that these results may best be achieved through a socialist form of society. The DuBois Clubs are independent of any parent organization and are free from political obligations to any political party in this country or

abroad. The policy of the DuBois Clubs is that membership is open to every young person who shares its goals, regardless of political point of view, race, creed or color.

The DuBois Clubs are dedicated to the defense and preservation of the fundamental liberties and freedoms of the American people as embodied in the Constitution of the United States and, in particular, in the Bill of Rights. Among these things, the DuBois Cubs are striving for (a) racial freedom and equality throughout the United States; (b) the termination of the present war in Viet Nam; (c) an end to economic deprivation among large sectors of the American community, and (d) the creation of jobs and job training opportunities. To these ends, they seek to utilize to the fullest extent the fundamental democratic liberties of freedom of speech, freedom of press, freedom of association and the right peaceably to assemble and petition the Government for redress of grievances, all of which are guaranteed by the First Amendment tothe Constitution of the United States.

The DuBois Clubs are a self-governing, wholly independent association of young Americans. All policies, programs and other decisions are made solely by the membership of the DuBois Clubs in accordance with democratic procedures. The highest governing body is the national convention. In the interim between conventions the highest policy making body is the national committee of the DuBois Clubs. Individual clubs are organized in local communities throughout the nation. These local clubs conduct activities

in their local communities consistent with the national program and objectives of the DuBois Clubs as set forth herein, as well as in response to the social, cultural, economic and political needs of the young people in the communities in which they exist. There are approximately 2500 members of the DuBois Clubs throughout the country in over twenty-one states of the Union. Plaintiff DuBois Clubs sues on its own behalf and on behalf of each and every one of its individual members, a class which is too numerous to bring before the Court.

2. Plaintiff, Brooklyn DuBois Club, is an unincorporated membership association with its headquarters in the State of New York. Plaintiff, Chicago West Side DuBois Club, is an unincorporated membership association with its headquarters in the State of Illinois. Plaintiff, San Francisco Citywide DuBois Club, is an unincorporated membership association with its headquarters in the State of California. These plaintiffs are local chartered affiliates of the DuBois Clubs whose members are automatically members of the national organization, meeting similar qualification requirements. The programs and policies of these local community clubs are the same or similar to those of the DuBois Clubs as hereinbefore set forth. They sue on their own behalf, on behalf of all of their members similarly situated, and on behalf of all other local community clubs affiliated with the DuBois Clubs, a class which is too numerous to bring before the Court.

3. Plaintiff HUGH FOWLER is a citizen of the United States and of the State of California. He is the national chairman of the

DuBois Clubs and a member thereof. Plaintiff TERENCE HALLINAN is a citizen of the United States and of the State of California. He is the national secretary of the DuBois Clubs and a member thereof. Plaintiff JOSE RISTORICCI is a citizen of the United States and of the State of New York. He is the New York and East Coast coordinator of the DuBois Clubs and a member thereof. These plaintiffs sue individually on their own behalf and on behalf of all of the officers and members of the DuBois Clubs similarly situated, a class which is too numerous to bring before the Court.

4. Plaintiff PROF. ROBERT J. HAVIGHURST is a citizen of the United States and of the State of Illinois. Plaintiff RALPH DI GIA is a citizen of the United States and of the State of New York. Plaintiff DAVE DELLINGER is a citizen of the United States and of the State of New York. Plaintiff NORMAN THOMAS is a citizen of the United States and of the State of New York. Plaintiff PROF. STAUGHTON LYND is a citizen of the United States and of the State of Connecticut. Plaintiff DONNA ALLEN is a citizen of the United States and of the District of Columbia. Plaintiff CARL OGLESBY is a citizen of the United States and of the State of Michigan. Plaintiff JAMES BEVEL is a citizen of the United States and of the State of Illinois. Plaintiff REV. JOSEPH SITTLER is a citizen of the United States and of the State of Illinois. Plaintiff DAGMAR WILSON is a citizen of the United States and of the District of Columbia. Plaintiff REV. WILLIAM COFFIN is a citizen of the United States and of the State of Connecticut. Plaintiff JOHN LEWIS is a citizen of the United States and of the State of Georgia. Plaintiff ELIZABETH SUTHERLAND is a citizen of the United States and of the State of New York. Plaintiff FRANK EMSPAK is a citizen of the United States and of the State of Wisconsin. These plaintiffs are not officers or

members of the DuBois Clubs or any of the affiliated local clubs. They do not necessarily adhere to or support all of the programs, policies and activities of the DuBois Clubs. They sue on their own behalf and on behalf of all American citizens who seek to exercise the fundamental rights guaranteed under the First Amendment to the Constitution of the United States providing for freedom of speech, press, assembly and the right to petition their government peaceably for redress of grievances, a class too numerous to bring before the Court. In particular, these plaintiffs sue individually and on behalf of all American citizens who seek to exercise these fundamental constitutional rights in an effort to express and advocate beliefs in respect to the prohibition of nuclear testing, the existence of colonial and neo-colonial exploitation, the institution of diplomatic relations with the Peoples Republic of China and Republic of Cuba, the admission of the Peoples Republic of China to the United Nations, the termination of travel restrictions to various areas of the world imposed by the United States upon its citizens, all of which are beliefs and opinions held by the plaintiffs DuBois Clubs. Furthermore, these plaintiffs sue individually and on behalf of all American citizens who seek to exercise without fear of retaliation the fundamental rights guaranteed to all American citizens in the First Amendment in an effort to express their concern and opposition to the present policies of the United States in relation to the continuation and threatened escalation of the war in Viet Nam, a class too numerous to bring before the Court.

B) Defendants

5. Defendant NICHOLAS DeB. KATZENBACH is a citizen of the United States and the Attorney General of the United States. He is sued individually and in his capacity as Attorney General. Defendant JOHN W. MAHAN is a citizen of the United States and the chairman and a member of the Subversive Activities Control Board, hereinafter referred to as the Board, an administrative agency established pursuant to the Subversive Activities Control Act of 1950, as amended, hereinafter referred to as the McCarran Act. He is sued individually and as a member of the Board. Defendant THOMAS J. DONEGAN is a citizen of the United States and a member of the Board. He is sued individually and as a member of the Board. Defendant FRANK KOWALSKI is a citizen of the United States and a member of the Board. He is sued individually and as a member of the Board. Defendant LEONARD L. SELLS is a citizen of the United States and a member of the Board. He is sued individually and as a member of the Board. Defendant EDWARD C. SWEENEY is a citizen of the United States and a member of the Board. He is sued individually and as a member of the Board. Upon information and belief, all defendants are residents of or have their offices in the District of Columbia.

II. JURISDICTION

6. The jurisdiction of the Court over the complaint arises under Title 11, §521, D.C. Code; Title 28 U.S.C. §§ 1331, 1332, 1343 (3, 4), 2201, 2202, 2282 and 2284; Title 42 U.S.C. §§1971, 1981, 1983, 1985; the Constitution of the United States, and, in

particular, Article 1, §9, Clause 3, Article 3, and the First, Fifth, Eighth, Ninth, Tenth, Thirteenth, Fourteenth and Fifteenth Amendments thereto.

7. The amount in controversy, exclusive of interest and costs, exceeds the sum or value of $10,000.

III. CAUSE OF ACTION

8. On or about March 4, 1966, defendant Katzenbach caused to be filed with defendants, members of the Board, a petition to force the plaintiff DuBois Clubs to submit to punitive registration as a "Communist-front organization" pursuant to the purported authority of the provisions of the McCarran Act, and, in particular §7 (b), (c) and (d) thereof, although defendant Katzenbach knew and believed that said Act and, in particular, these provisions were violative of the Constitution of the United States. A copy of said petition is attached hereto as Exhibit A and incorporated herein.

9. Pursuant to this petition, defendant members of the Board are threatening to proceed immediately with the holding of administrative hearings before the Board designed to compel plaintiff DuBois Clubs to submit to the punitive regulations of the so-called "Communist-front" provisions of the McCarran Act.

10. The McCarran Act and, in particular, the so-called "Communist-front" provisions thereof, namely §7 (b), (c) and (d) of the Act, is void and illegal on its face and as applied to the plaintiffs herein in that it violates the Constitution of the United States and, in particular, Article 1, §9, Clause 3, Article 3 and the First, Fifth, Eighth, Ninth, Tenth, Thirteenth, Four-

teenth and Fifteenth Amendments thereto.

a) The "Communist-front" provisions of the McCarran Act violate on their face and as applied to the plaintiffs the fundamental guarantees of freedom of speech, freedom of the press, freedom of assembly, freedom of association and the right of citizens to petition their Government for redress of grievances, all of which are guaranteed under the First Amendment to the Constitution of the United States.

b) The "Communist-front" provisions of the McCarran Act are overly broad and vague in violation of the First Amendment to the Constitution of the United States. They are unduly vague, uncertain, and broad in the area of the protected freedoms of the First Amendment. These provisions seriously inhibit the exercise of the fundamental freedoms protected by the First Amendment. Their overbreadth and sweeping character create a chilling effect upon the exercise of fundamental First Amendment rights.

c) The "Communist-front" provisions of the McCarran Act violate, on their face and as applied to these plaintiffs, the guarantee of due process of law contained in the Fifth Amendment to the Constitution of the United States, in that these provisions are vague and indefinite and fail to meet the requirement of certainty in statutes containing criminal sanctions.

d) The "Communist-front" provisions of the McCarran Act violate, on their face and as applied to these plaintiffs, the guarantees of the privilege against self-incrimination contained in the Fifth Amendment to the Constitution of the United States.

e) The "Communist-front" provisions of the McCarran Act violate, on their face and as applied to these plaintiff, the constitutional prohibitions of ex post facto legislation and are bills of attainder and unconstitutional delegations of legislative power, all in violation of the Constitution of the United States.

f) The "Communist-front" provisions of the McCarran Act would impose cruel and unusual punishment for thought, speech, writing, petition and assembly, all in violation of the Eighth and First Amendments to the Constitution of the United States.

g) The sum total of the impact of the "Communist-front" provisions of the McCarran Act upon the fundamental constitutional liberties of American citizens was summed up by President Harry S. Truman in vetoing the original Act, as follows:

> "The application of the registration requirements to so-called 'Communist-front' organizations can be the greatest danger to freedom of speech, press and assembly since the Alien and Sedition Laws of 1798."

11. The actions and threatened actions of defendant Katzenbach in attempting to enforce the "Communist-front" provisions of the McCarran Act against the plaintiff DuBois Clubs are without any hope of ultimate success but are only to discourage the plaintiffs' immediate exercise of rights, privileges and immunities secured to them by the Constitution and in particular the right of freedom of speech, press and association. Defendant Katzenbach has publicly stated that his expectation of ultimate success in the threatened enforcement of the Act against plaintiff DuBois Clubs is very slight but that the real purpose of the

threatened enforcement is to discourage young Americans from joining plaintiff DuBois Clubs. The purpose of the threatened enforcement of the Act it to hamper, restrict, harass and deter plaintiff DuBois Clubs and the other plaintiffs and classes of plaintiffs from exercising fundamental rights guaranteed under the First Amendment, all in violation of the Constitution and laws of the United States.

12. On or about March 4, 1966, defendant Katzenbach, for the express purpose of hampering, restricting, harassing and deterring plaintiff DuBois Clubs from exercising fundamental rights guaranteed under the First Amendment, all in violation of the Constitution and laws of the United States, did cause to be issued a press statement announcing the threatened enforcement of the Act against plaintiff DuBois Clubs, although he had no hope or expectation of ultimate success.

As a direct result of said public announcement, persons presently to the plaintiffs unknown:

a) did, on or about March 5, 1966, detonate a bomb in the headquarters and premises of the plaintiff DuBois Club in San Francisco, California, causing the total destruction thereof, and,

b) did, on or about March 5, 1966, brutally, maliciously and without justification assault members of plaintiff Brooklyn DuBois Club in the City of Brooklyn, New York, who had peacefully assembled pursuant to their fundamental right under the First Amendment to meet and express their opposition to

defendant Katzenbach's actions.

13. The purpose and effect of all of the above acts are to harass, intimidate, threaten and deter plaintiffs and members of plaintiff classes from exercising rights, privileges and immunities secured to them as citizens of the United States by the Constitution and laws of the United States, by frightening and discouraging plaintiffs and the classes they represent as well as other Americans similarly situated from joining, supporting, assisting or defending the plaintiff DuBois Clubs in any manner whatsoever, or otherwise exercising their fundamental rights of citizenship in expressing their views and opinions on matters of grave public concern or from engaging in the historic, traditional and fundamental right of American citizens to dissent from the stated policies, foreign or domestic, of their Government.

14. Unless this Court restrains the operation and enforcement of the void, invalid and unconstitutional "Communist-front" provisions of the McCarran Act, plaintiffs and members of the plaintiff classes will suffer serious, immediate and irreparable injury in that:

a) Defendants imminently threaten and continue to threaten to enforce these void, invalid and unconstitutional provisions against the plaintiff DuBois Clubs. The very pendency of these administrative proceedings, regardless of their ultimate outcome, has resulted and will continue to result, unless restrained by this Court, in immediate and irreparable injury to fundamental constitutional rights guaranteed to these plaintiffs

and the classes of citizens they represent, in that substantial loss and impairment of freedom of expression will occur if plaintiffs are required to await the inevitably long drawn-out administrative proceedings and ultimate review by the Supreme Court of the United States. The threatened enforcement of these statutory provisions will have the immediate effect of deterring plaintiffs, the members of plaintiffs organizations, friends, and supporters of plaintiffs, and the entire class of citizens represented by plaintiffs, from exercising fundamental rights of free speech, press, assembly, association, and the right to petition, as potently, directly, and immediately as any ultimate final application of the punitive sanctions sought by the defendants.

b) The threatened enforcement of these void, illegal and unconstitutional provisions through the threatened administrative proceedings unless restrained by this Court have had and will continue to have an immediate and irreparable chilling effect upon the exercise of fundamental First Amendment rights unaffected by the prospects of the success or failure of the threatened enforcement proceedings. Plaintiffs and members of the plaintiff classes, members of the plaintiff organizations, friends and supporters, and countless members of the plaintiff classes will be deterred from exercising their rights to freedom of speech, freedom of press, freedom of assembly, freedom of association in organizations of their own choice, and their right to petition their Government for redress of grievances, all protected by the First Amendment. Furthermore, the threatened enforcement of these

void, illegal and unconstitutional provisions through the threatened administrative proceedings have had and will continue to have an immediate and irreparable chilling effect upon the exercise of First Amendment freedoms by countless hundreds of thousands of other American citizens who will be deterred from exercising these rights. This creates a threat of immediate and irreparable injury to the fundamental interests of the Nation, since free expression -- of transcendent value to all society and not merely to those exercising their rights -- will be the victim.

c) The threatened enforcement of these void, illegal and unconstitutionl provisions through the threatened administrative proceedings, unless restrained by this Court has resulted and will continue to result in the discouragement, deterring, and intimidating of many citizens who would otherwise have contributed substantial sums of money to plaintiffs for the assistance of the activities of plaintiff organizations/all of which are designed to permit plaintiff organizations to exercise fundamental rights of the First Amendment including the right to publish and disseminate written material expressing their views and opinions on questions of serious national concern.

d) The threatened enforcement of these void, illegal and unconstitutional provisions through the threatened administrative proceedings has resulted, and unless restrained by this Court, will continue to result in grave and irreparable injury to the right of plaintiffs to exercise the freedom of association protected by the First Amendment in that many citizens will be

deterred, frightened and intimidated from joining plaintiff organizations, and hundreds of thousands of citizens will be deterred, frightened and intimidated from joining other social, political, cultural, economic or other organizations which hold or advocate some or all of the positions and views for which defendants seek to proscribe plaintiff organizations.

e) The threatened enforcement of these void, illegal and unconstitutional provisions, through the threatened administrative proceedings, unless restrained by this Court will result in a serious and substantial, clear, present and imminent threat to the national interest and security in that the resultant chilling effect upon the fundamental right of American citizens to dissent from the policies of the present administration in pursuing the war in Viet Nam through the exercise of First Amendment liberties, will have a grave effect upon their fundamental right to participate in the decisional processes which affect the destinies of the nation.

16. No previous application for the relief sought herein has been made to this or any other court.

17. Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray for the following relief:

a) that pursuant to Title 28 U.S.C. §§2282 and 2284 a three-judge federal district court be immediately convened to hear and determine this proceeding;

b) that a permanent injunction issue:

(1) restraining defendants Katzenbach, Mahan,

Donegan, Kowalski, Sells, Sweeney, their agents, attorneys and all persons acting in concert with them from the enforcement, operation or execution of §7 (b), (c) and (d) of the Subversive Activities Act of 1950, as amended, and

(2) restraining defendants Katzenbach, Mahan, Donegan, Kowalski, Sells, Sweeney, their agents, attorneys and all persons acting in concert with them from impeding, intimidating, hindering and preventing the plaintiffs and the classes they represent, or members, friends and supporters of all organizational plaintiffs from exercising the rights, privileges and immunities guaranteed to them by the Constitution and laws of the United States; and,

c) that a declaratory judgment issue declaring that §7 (b), (c) and (d) of the Subversive Activities Control Act of 1950, as amended, is void on its face and/or as applied to plaintiffs as violative of the Constitution of the United States, and,

d) that, pending the hearing and determination of the prayers for permanent relief, an interlocutory injunction issue restraining Katzenbach, Mahan, Donegan, Kowalski, Sells, Sweeney, their agents, attorneys and all others acting in concert with them from enforcing or executing in any way §7 (b), (c) and (d) of the Subversive Activities Control Act of 1950, or from instituting, conducting or undertaking any proceedings whatsoever pursuant to said statute against the plaintiffs herein.

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CABLE ADDRESS
"KANDKLEX"

July 29, 1966

Re: W.E.B.DuBois Clubs v. Katzenbach

Dear Friend:

We are enclosing herewith a sample affidavit for your organization to execute before a notary and return to this office, if it feels that it wishes to do so.

It may be modified in any way you deem appropriate, but we impress upon you that it must be returned within a week.

It is to be used in conjunction with a motion for a temporary injunction to prevent hearings before the Subversive Activities Control Board prior to the disposition of this lawsuit, which asks for a permanent injunction against such proceedings.

Your help is urgently needed in this matter and we would deeply appreciate your prompt consideration of this letter.

For your convenience, a stamped, self-addressed envelope is enclosed for the return of the affidavit.

Very truly yours

William Kunstler

William M. Kunstler

WMK

Miscellaneous Notes on Florida cases

Box 45
Folder 9

Criminal Order

Closing -

141 F Supp 248. park closed

aff'd. ①.

Not on US

Clark v Flory, 237 F.2d 597 (1956) (US CA, 4th).

Per Curiam

While decree ct pending, State Leg. passed statute providing that parks be closed & remain so. (motions to dismiss as moot)

Tate: "It is perfectly clear under recent decisions that citizens have the right to the use of the public parks of the state w/t discrimination on the ground of race."

No need for dj here - in view of the fact that the park had been closed by act of the legislature, there was no basis for the issuance of an injunction with regard to its use. Under such circumstances, the case had become moot & its dismissal was proper.

141 F Supp 248. (1956)

~~Continued on page~~

p 250. DICTA

"No one contends that this Court has the power to require the State of South Carolina to operate any park. If it enjoined the defendants from operating a segregated park, it would be doing a futile thing, as there is no park in operation in Charleston County at the present time, nor is there any immediate prospect that the Edisto Beach State Park will be in operation."

See Lawrence v Hancock, D.C. 76 F Supp 1004.

Tate

Clerk enjoined?

Pool cases ag us.
Montgomery 277 F2d 364. (5th circuit). (1960).
Jacksonville 304 F2d 319

ag us.

City of Montgomery Alabama v Gilmore. 418 107. (USCA 5th.)
(1960). 277 F2d 364

Parks closed in 1/59. (Lit again began 12/58).

D. Ct - 176 F. Supp 876. full gener -> improper ordinance
segreg parks: but did not hit closing.
p368. List of cases.

p368. "We agree with the district court that no law, State or Federal, requires the City to operate public parks. Closing the parks does relieve, at least temporarily, any discrimination against the Negro and other Negroes. That is, however, a Pyrrhic victory indeed, for it comes at the expense of depriving all persons in the City of public park and recreational facilities. - 369

369 Closing ... & reasons matter committed to wisdom of Board & Commrs - not subject to review.

Pose free association argument & even 14th prohibits segreg (gov't enforced) but does not require integration..

Tonkins v City of Greensboro, North Carolina
162 F. Supp. 549. (1958).

Action for preliminary & perm inj to enjoin D's from refusing to permit Pl's (Negroes) to use Lindley Park Swimming Pool because of race and (2) enjoin D's from selling Pool to avoid duty of operating same for Pl's & others - & for purpose of denying Constitl Rights of Pl's.

D. Alleg D's seeking to dejure - motion to dismiss.

(Facts - what are Tallahassee facts)

Issue I: Whether defendants may continue to refuse to permit plaintiffs, and other Negroes similarly situated, to use Lindley Park Swimming Pool solely because of their race and color?

Right to use moot beause of commitment to sale. Then D is since received petition to use by Pl's - did B's have right to elect to sell or close pools?

Closing pool - makes issue of court use moots, similarly closing of parks
Clark v Flory DC ED SC 1956, 141 F Supp 248, aff'd 4 Cir., 1956, 237 F.2d 597.
(No D. of advisory opin) → makes of substantial controv as to Π's rights to use pool.

Π Whether D's may sell Lindley Park Swimming Pool for the sole purpose of avoiding the duty imposed upon them to permit use of the pool by both Negro and white residents of Greensboro under the terms and conditions, and for the sole purpose of defeating the constit'l rights of Π's and others similarly situated, to use the swimming pool under the same terms and conditions applicable to white citizens?

Real issue - if can't enjoin sale then no claim for relief.

Π's - closing & sale to avoid integrated operation
sole purpose of
1

Δ's - City Council recognized continued operation - it would be on integ basis - issues disrupt integrated in its jurisd
harmonious relationship between 2 races - impair usefulness & economic value of them properties → public disorder - best public interest to close & sell - use proceeds to other recreational uses of more benefit to > # of citizens.

Judge accepted theory of Δ at face value.

Legal principles of equal protection inapplicable because deal w/ facilities being operated.

Q whether Court imposes on a municipality the positive duty to own & operate recreational facilities.

Π's legal theory - denial of equal rights where purpose of closing or sale is to avoid necessity of operation on racially integrated basis.

LOCAL LAW: "The court is not aware of any law in North Carolina which requires a municipality to construct or operate swimming pools or other recreational facilities." - enabling w/t obligation.

See Sale of municipal property provisions City charter.

... "If the swimming pools are closed to all, or disposed of through a bona fide public sale, there can be no unequal treatment and therefore, no racial discrimination. No citizen of Greensboro will have access to municipal swimming facilities.
... If closed rights of all groups equal ∴ no discrimination.

Prec: ① Clark v Flory (supra) parks
S.C. in D. NC 1953 - 99 F Supp 562
② Simkins: 1 only dispose gov't course by bona fide sale - state here retained juries. - no mere boarding allowed.

Dismissal deferred for 30 days after sale confirmed - to assure bona fide - no collusion & successful bidder is future use.

Tompkins v City of Greensboro 175 F Supp 476 (1959).
USDC MD Nth Carolina.
Supplemental complt & decision.

Issue: Was Greensboro pool corporation a bona fide purchaser? & can D's be enjoined from refusing to permit Π's & et al to use Lindley Park Swimming pool equally in whites?

Π's fail.

Find sale bona fide - eq duly & regl adv & sold accord w local law. Similar to adverse Π for sale of municipal property.

No reasonable abt supervision.

Π's find series of events inferring different conclusions:

①. Dr Tolliaferro, Pres. of Greensboro Pool Corp - member of Parks & Recreational Commission & originally insisted city continue operation on segregated basis.

②. Mayor & other officers & Greensboro Pool Corp public stated that pool if acquired continue operate for sole use of white citizens.

③ First had rejected so GPC did same thing

(4) Elimination of bidders cause of ~~city~~ city's refusal to change zoning ordinance requiring operation on non-profit basis.

(5) Liberal terms of purchase price to GPC to make " easier.

(6). City retained control over future operations & use by naming one of its attorneys the trustee in a deed of trust securing the unpaid balance of the purchase price.

Court refuses to draw Π's inferences

Draw Π's from trustee in deed of trust power to foreclose & sell where default & request of note holder — ∴ if city has option to declare entire debt due = power to control manner of operation.

Cf: But presuppose owner will default & compelled to request extension of time — & city will grant only if owner agrees to city's demands for ~~operation~~ operation...

Unsupported

No evidence that GPC will default, be granted extension of time, or that city would repurchase property at foreclosure sale...

Public announcement

"This contention is based on the novel legal theory that municipalities may rely sell vendee's faulties upon the condition that the purchaser will operate on integrated basis."

Tonkins v City of Greensboro
aff'd 276 F 2d 890 (1960) (US ct appeals, 4th)

Per curiam.

Q: Apart from motive, was sale real or only a pretense?

Supports DCts finding.

Jordahl's 1 E.'s under 14th C Equal Prot

(Purchaser corp org thru officers & person in merely advising relat to municipal corp – 9 man Comm – legal auth in City Council)

... a case of racial discrim in respect to a sport privately owned, financed & operated w/o participation or assistance, direct or indirect, by the City of Greensboro. This does not constitute state action or conduct which a Fedl Ct may enjoin under the 14th amendment.

See review project in Bell v. Md.

Bar Library – look up "purpose" in Words & Phrases.
Organize cases:

NAACP.

NAACP Brief for appellants. Tonkins v City of Greensboro.
U.S. Court of Appeals – 4th Circuit. # 8025.

Relief: injunction – (1) enjoining city from refusing Negroes use
(2) " " " selling the pool for
sole purpose of depriving the constitutional
rights of Negro citizens.

Ct – 1st opinion – no duty in city to maintain a swimming pool.

p25. "Sale of Lindley Pool came about solely as a result of the fact that Negro residents of the community petitioned for the right to use it. When the matter was brought before the City Council, this court had just handed down its decision in Simkins v City of Greensboro supra holding that Negro residents of Greensboro could not be excluded from Gillespie Park Golf Course simply because the city had entered into a lease arrangement ... Lease to avoid onerous taxes ... Therefore, there had been a petition from the Negro community to use the course prior to the city's entering into the lease arrangement ...

26 "A careful scrutiny of the facts here leaves no room for sanction by the federal courts which must, under the federal civil rights statutes, zealously guard against state actions which subvert constitutional guarantees."

① Analogy to right of Negroes to participate in election of public officials:

Reviewed cases.

Sale like Elect Primary obviously to prevent Negro vote.

Guinn v US — Schnell v Davis
Mixon v Herndon v Condon — ☆ Rice v Elmore
Lane v Wilson — Barkan v Brown
Smith v Allwright — Terry v Adams.

P27. Analogy to School desegregation: stratagem to evade effect of decisions — Grant, tuition pay, private schools.

Shuttle drives. eg. Cooper v Aaron 358 US 1, 19.
James v Almond 170 F Supp 331 (ED Va 1959)

Any cases where voting gerrymandered entirely? ②

Tourtellotte v City of Greensboro, North Carolina. US D.Ct. Middle District of North Carolina, Greensboro Division; Civil Action File # C-61-C-58.

Plaintiff's Brief.

Argument.

Still after sale.

Irreparable Injury (make the pt in my brief)

~~See 38 Am~~ 38 Am. Jur. 5487 (Desperation gerrymandering)

for injunct to operate on dang hair - Civil Action # C-61-G-58.

Brief.

①. Statement of the Case

DJ & Inj - may not sell or close - to avoid duty imposed by 14 Amendt

Amend §1343(3)

D/P, EP & Clause 2 of 1 Art VI.

Motion to dismiss (#6).

(p2)

Δ's agreed that for purposes of their motion to dismiss they must admit all of the facts alleged in the amended complaint exclusively due to sell ... for sole purpose of avoiding duty to operate on racially integrated basis & for purpose of depriving constitutional right of π to have so forbad.

(p6)

"The provision of swimming facilities by a govtl unit, such as those involved in this case, is expressly declared to be a necessary governmental function by statute in North Carolina.
General Statute North Carolina. §160-156.

(p7)

Issue: Whether Δ's may sell or close publicly owned and operated Recreational Facilities for the sole purpose of avoiding the duty imposed upon govtl authorities to permit use of such facilities by both Negro & White residents under like terms and conditions.

Argument

I

The duty to support the Constitution of the United States imposed upon State officials by Article VI, Clause 3, of the Constitution is violated by action of state officers in selling or closing public facilities for the purpose of avoiding the duty imposed upon state officials by the Equal Protection Clause of the 14th amendment to the Constitution.

Muir v. Louisville Park Theatrical Assoc. 202 F. 2d 275 (C.A. 6, 1953) vacated 347 U.S. 971 (1954), (theatre leased to private lessee).

"According to newspaper reports, following this court's decision in the golf course case, the club house connected with the golf course was allegedly burned, after which the course in question was not opened again by D's & the Negro golf course was also closed."

Petition etc denied wrt sworn pos?

Did D's have right to elect to close a dell works rather than carry out duty to permit joint use?

B.

There is constitl affirmative duty of state officers to support 14th Amend - affirmatively carrying out duties imposed by it ... when asked to do so by those to whom the duty is owed.

Art. VI, clause 2

Oath VI, 3; 4 USC §101

See off duty in Brewer v Horace school district 238 F.2d 91 (C.A. 8, 1956). at 95, 98-99.

See 100

p12. "The existence of a constitl duty on state officials to support the 14th Amendment presupposes a correlative constitl right in persons residing within the state to have that duty carried out.

See Logan v U.S. 144 U.S. 263 (1892)

Claim Π's have a fedl constitl right to have Δ's perform duty imposed by 14th wrt to pml.

Cts issue injunctions when protective of constitl right required, e.g., Brewer; Dawson, etc.

Stephens.

Argument II

State Action.

Arg ag claim not w/ol anyone's rights since neither P's or W's will be able to stream in public pool.

Does not meet duty argument.

Of course white person not deprived - can swim there in per pool.

p13 "However, under the facts of this case, D's action will result in the deprivation of the right of Negroes to have the D's uphold the 14th Amendment when Negroes request their right under that Amendment."

Underlying real value concerning abt white sub.

. . . simply because state action adversely affects both Negroes & whites indiscriminately, in that neither will be able to swim, this kind of state action does not meet the requirements of L/P & E/P. Shelley v Kraemer 334 U.S. 1 (1948).

Suggestion Negroes could also make restrictive covenant regarded: "equal prot not achieved through underincl exclusion of minorities."

Only equal prot if point swimm - not refused to let whites swim also.

Last of cases where state action innocent on its face slunk down. p15

Last of cases to show that "states cannot avoid the duty imposed upon them by the 14th amendment by seeking to divest a gov'tl function of its public character". p16

(Cont see gov'd fcx).

(G)

Action potentially inconsistent w 14th amendment guarantees.

Π's argument D's may dispose of public property to [illegible] 38 Am Jur §457. But cannot [illegible] to destruction on its exercise. Shelley v Kraemer.

Apply to my power to sell v Clare.

Apply to power to close. Clark v Foley, 141 F Supp 248 (E.D.S.C. 1956) aff'd 237 F2d 597 (C.A. 4, 1956).

See p250. Court took at intent.

No evidence of intent to avoid constitl duties (pldg any).

"If there had been any such evidence, it is clear from the Short of the Restrict Ct, that circumvention of the right of Π would not have been permitted by a federal court of equity.

(8)

Π's contentions unanswered in prior binding cases as to 14th, & 2 & 3 of Id.

No holdings to contrary.

Looking at purpose

Dennington v Plummer; 148 F Supp 326 (S.D. Texas 1955), 240 F 2d 922 (C.A 5, 1958) cert den. 353 U.S. 924.

Tate v Department of Conservation & Development 133 F. Supp 61 (E.D. Va 1956), aff'd 231 F. 2d 615 (C.A. 4, 1956) cert den 352 U.S 838.

Sunkens v Rice Federal Law Reporter 688 (1957).

purpose or effect of defeating Π's C rights

↓

Berry in Darlington.

As action for purpose of defeating Constitutional rights.

IV

Q: reasons for closing pools resettlement in Gov.

① Buchanan v Warley 245 U.S. 60 (1917).
Dawson
Brown v New Orleans.
City of Birmingham v Monk.

② Nec gov'tl f(n) - health & welfare.
not profit

NB - Were Tallahassee pools, since when, generated at a loss?

Want decree to enjoin Δ's from refusing to reopen the pools.

Mandatory inj requiring affirm action - against Δ's. No q that federal ct of equity has power to issue mand inj where circum of case demand it.

Always in school case. See Frazier v Board of Nth Carolina 134 F. Supp 589 (M.D. N.C 1955) aff'd 350 U.S. 979 (1955)

Decree not contrary to galah practice.

since action to choose came after due deliberation made on A's & after suit filed.

III I cases:

Porter v Warner Holding Co 328 U.S. 395 (1946)
Porter v Lee 328 U.S. 246 (1946)
Johnson v Yellow Cab Transit Co. 321 U.S. 383 (1944)
System Federation v Wayman Ry. Co 290 U.S. 515 (1937)
affirming 84 F.2d 641 (C.A. 4, 1936)
Ex parte Levitt 166 U.S. 548 (1897)
Rosenberg v. American Investment Co. 9 Ill
231, F.2d 333 (C.A. 7, 1956)
Walton v 40 East Oak St Bldg 70 F.2d 377
(C.A 7, 1934 cert den. Chicago Title
& Trust Co v Walton 293 US 590.

(1)

Record of Jacksonville Case.

Transcript of Record. U.S. Court of Appeal. 5th Circuit.
No. 19,297. D.C. No. 4368-C.J.

Hampton v. City of Jacksonville, Florida, et al.

Appeal from U.S. Dist Ct for the Sthn District of Florida.

Appellants Brief.
Statement of Case, p 6+7.

(1). Dist Ct. - petition for Declaratory Judgment requesting injunctive relief from race discrim in public owned operated or leased recreatl facilities - -- entered Summary Final Judgment, Declaratory Judgment and Permanent Injunction

Effective eq. swim pools Jan 9, 1961.

Opened summer - prior - outside w shut -

"recreation department employees have orders to close the pools if any attempt is made at integration"

Pools opened June 10, 1961.

June 11, 1961. Negroes tried to use white pool.

End conflict whites closed pools to arrival or at moment of attempt to enter -- but pools not reopened on June 12, 1961 - 6 closed to present.

June 13, 1961 - appellants Petition for Rule to Show Cause as appellees - prayer for court to hold them in contempt for willfully violating permanent inj.

June 13 '61 - Motion to Modify Permanent Injunction to enjoin appellee from closing the pools on the grounds "that the pools were closed for the sole purpose of denying Negroes the use of the pools".

June 13, 1961 - Court - Order for Rule to Show Cause.

June 21, 61 - Motion to Quash the Rule to Show Cause on behalf of Hayden Burns, Mayor - Comm'r.

July 5, 1961 - after trial of the issues - trial Ct entered Order discharging Rule to Show Cause & denied appellants' motion to modify Permanent Injunction.

Jacksonville Board.

Appellants Brief.

July 12, 1961 - appellants filed Notice of Appeal - from Court order granting Bar's motion to discharge them from Rule to Show Cause - to Ct's order discharging Petet'rs Rule to Show Cause & denying their motion to Modify the Permanent Injunction.

Stmt of Pts.

... 4. whether the evidence presented was sufficient to prove that all the named D's had violated the U.S. District Court's injunction and for said reason should be adjudge in contempt of Court for their action.

2 parts to argument.

1. Contempt wrt injunction
2. what is in Charge for sole discrim purpose.

Distinguish charge for such purpose / right to sell homestudio (viz can we thus distinguish Greenburg).

4p →

An D. J - Court recognized City's authority to sell the pools in a bona fide sale - does not and should not carry with it the recognition that the city also has the authority to close the pools to prevent colored citizens from using them.

True: D J. provided city not compelled to operate public swimming pools - but if operated by City must be operated w/ it discretion.

Then any abt announcement of mixed swimming, ∴ contempt of city to fail with such intent to close.

Arg 2.

The issue as to whether or not a municipality can cease to operate a recreational facility after a U. S. District Ct. has enjoined the city from operating that particular facility on a segregated basis has to some extent been determined by U. S. District Courts.

Clark v Flory 141 F. Supp 248 (E.D.S.C. 56); aff'd, 4 Cir. 237 F.2d 597 (1956).

Simpkins v City of Greensboro 149 F. Supp. 562 (M.D.N.C. 1957).

Tonkins v The City of Greensboro 162 F Supp 549 Case aff'd by U.S. Court of Appeals, 4 Cir, 276 F.2d 890 March 14, 1960.

Arguments distinguishing above cases:

Cts dent. appeal - looks more to benefit of city's action without closely examining basis on which city acting there legislation bodies. 14th limits state power in any manner which in effect deprives citizen of equal protection.

"If State power is first put in motion so as to protect individuals of a certain designated group of citizens so long as they alone gain the benefits of the state's action, could it be said that the state power put into operation at a subsequent time which in effect terminates the benefit derived from the state's first action simply because the benefits under the first action are determined by a Federal Court to be benefits that cannot be withheld from another designated person or group of persons on a segregated basis, would in fact be putting into effect state action which does not deny the equal protection of the law to members of the second group."

Jacksonville appellant's brief (6)

X - Logic 06

State action - benefits - kind of fiduciary what - serve best interest of citizens - State first recog need for facility to serve the interest of the people "ought not be in a position to withdraw the services of that facility from all the citizens simply because all citizens must be treated equally in rendering the service; and when State action is taken to withdraw the public service from all the people, after having rendered the service to some of the people, after being ordered by a Fed Ct that they must render the service on a non-racial discriminatory basis, simply because they don't want to render the service to that particular person or group of citizens, it is clear that the subsequent action of the State is a denial of equal protection of the Laws;" - to shield be under 14th.

Our CR Act 64 pt analogous to Fed Act Ct pt. City shld be required to prove inability to continue service for reasonable reason - eg. lack of funds or insufficient - proof or ... "rights sought to be protected by the Court would be left a shadow subject to the whimsical desires of indiscreet public officers".

Jacksonville. Appellant Brief. (7)

Doesn't have "motive" of municipal bgs. to adm. acts squarely but to present intent must go behind perimeter when nullifies judicial decree -

Berk.

Faulkner v US 8 Cir. 254 F 2d 797.

Taylor v New Rochelle 191 F Supp 181.

Issue p24 not only authority to close pool - but whether auth. it in a manner which did not violate 14th amendment of U.S. Constitution.

Quote from Judge Kaufman in - Taylor v Board of Education of City School District of the City of New Rochelle.
191 F. Supp. 181.

"The Board also contends, with respect to its decision to rebuild Lincoln School on its present site, that it is empowered by state law with the authority and duty to select locations for schools. The existence of this authority, however, is not questioned by the plaintiffs. But this power, like any other, must be exercised in accordance with the demands of the Constitution ... Similarly, the fact

that the people of New Rochelle overwhelmingly approved this proposal by referendum is of no legal significance. Constitutional rights can certainly never be made dependent upon public choice. The consequences if they were, need hardly be labored. NB

"Perhaps the real question before the Court is whether the defendants could close the public pools upon the sole ground of denying to colored citizens their Constitutional rights to use the pools on a non-racial discriminatory basis; the defendants having wholly failed to show any other reason why they exercised their authority to close the pools after opening the pools subsequent to the issuance of the District Court's injunction."

"Although white persons were unable to use the pools because they were closed, it must be remembered that the pools were not closed to deny them the right of using the pools because they were already using the pools; the pools were closed for the sole purpose of denying Negroes the right to use them."

Could we use 28 195— or 24.

What are powers of Tallahasee City Govt. (9)

Closing order discriminates - intent & purpose - to exercise of state powers in a discriminatory manner - viol DP & EP.

It is a legal truism that "acts generally lawful may become unlawful when done to accomplish an unlawful end." Western Union Telegraph Co. v Foster, 247 U.S. 105-114 (1918) (Holmes J.)

What are duties and powers of city officials?

Appellees Brief: Fed Rule 52(a)

Opinion May 17, 1962 op. opinion.

Hampton, et al. v City of Jacksonville. (Simpson, J.)
U.S.D.Ct. Dec 7, 1960 # 4368 –

p 1147 RR Reporter – cases deciding meaning of facil must operate on desegr basis:

"It is also clear that such segregated operation may not be justified as a means to preserve public peace, and is not a proper exercise of police power. (Dawson v Mayor of Baltimore Ct of Cir. 1955 220 F. 2d 386 aff'd 350 U.S. 877)

Concl of Law

p. 1147. #4. (NB) ↓

"It should be emphasized that nor for as is legally required, the City of Jacksonville need not operate nor make available to its citizens any recreational facilities whatever. The City may close all such facilities, it may close some & continue to operate the remainder, or it may keep all such facilities open. What is required is that any facilities owned & operated by the ~~City~~ City, or owned & leased by the City must be open equally & on an identical basis to all members of the public, devoid of discrimination in any form upon the basis of race or color."

Laws of Ga., Spec Act 1895.

(11).

Simultaneous closing of pole & Jacksonville golf course.

Ok'd

Declaratory Judgment in Jacksonville. p3

#4. "Whether based upon rules of law, statute, ordinance, policy, practice, custom or usage, or as a means to preserve public peace, or as a claimed valid exercise of state police power, or upon any other ground whatever, such unlawful discrimination, having been found to exist, may not be permitted by this Court to continue. It will continue unless restrained by appropriate injunctive order of this court."

See #5. "The City is not required to operate or maintain any segregated facilities, but any such facilities owned and operated, leased & operated, or owned & leased by the City may lawfully be used upon the basis above set forth."

~~Chapter 27633, Laws of Florida, Acts 1951.~~

Public Parks, disorderly conduct, Jones by Stewart 30.271.

Jacksonville.

1962

Hampton v. City of Jacksonville Florida
(1962. 304 F.2d 319. Ct of App., 5th Cir.)

Order desegreg. threat of closing maintained
pursuad. 5 Race Rel L Rep 1145 (1960.).

Δ's discontinued operation of the city's swimming
pools to the dist ct declined to judge them
in contempt. aff'd 5th Cir.

Per Curiam:

"In light of the finding of fact made by the
trial court, the only remaining question present
in this appeal has been decided adversely
to appellants by this Court in City of Montgomery, Ala. v.
Gilmore, 5 Cir., 277 F.2d 364. On the strength
of that opinion we cannot say that the trial
Court erred in declining to adjudge the Δ's,
the appellees here, in contempt of court for
failing to continue the operation of the swimming
pools in the City of Jacksonville.

Hamplton v City of Jacksonville, Florida. (1962.) (Golf)
304 F2d 320

2nd suit to enjoin private parties from discriminating.

Examination by Tuttle of K of sale. Friend reversionary clause ∴ said no right than right of cancellation if a base fee purpose not carried out. ∴ Destroying

Conlin — outright sale of a swimming pool without any restriction or reversionary clause of any kind.

NB Leasing

(1)

Park

Tate v. Department of Conservation and Development. 133 F. Supp. 53. (1955)
D.C. E D Virginia, Norfolk Division.
(park leasing case)

~~My claim plain~~
According to facts leasing contemplated, not actual, @ time being begun in 1951 - 1954 - amend complt 17 's - & leasing mere actual but no existing lessee. & Ct said in sum that reason for leasing financial:

p56. "With all due respect to the able leaders of this Commonwealth, it is perfectly apparent to the Court that the fundamental reason for the contemplated leasing lies in the problem of use by members of all races. It is probably true that financial reasons are paramount, but the potential civic loss is bright alert by the decisions of many cts ... holding that property acquired, maintained, & operated by the Fedl, State & local govt shall be made equally available to all races subject to reasonable rules & regulations." The proposed "negotiated lease" effectively vests in the hands of a small group the power to accomplish by indirection exactly

What all Courts have said cannot be due. The control secured in a "negotiated lease" through the medium of "selecting" the lessee is as powerful as the actual words of any written lease.

1857

Statutes dayed giving greater leaving & conveying power - to meet new problem.

[Interpretive variation & renewal in Nunn to indicate disapproval of Dist Ct opinion upholding lease.]

Ct agrees with Ohio ct in Clarer case; MB
"The power to lease does not include
P59 the power to discriminate against members of a minority race in the exercise of their constitutional rights."

See Lawrence v Hancock 76 F Supp 1004, 1005

Tate (cont'd)

Even if lease, has been proposed — silent as to rate restrict to give lessee full power to set own rules & regulations.

State city cannot pave way for priv corp to discrim.

p61 Cf reg arg that should not require "uniform lessee" ... → notes oper at loss of unregd lessee — or if only what or W's action other case seem to complain:

"Accordingly, the Δ are required to elect to operate on a nondiscriminatory basis, or, if leased, to see that the park is operated by the lessee without discrimination."

p61 "If in the wisdom of the leaders of this Commonwealth it is determined to close Sandline State Park, this is not a matter for determination by the court".

Not bona fide sale or lease in his in this good faith.

p61 (6).

"In short the power to sell or lease must not include the power to discriminate against members of any race. Such a power exists in this case under the contemplated leasing . . .

. . . p61

"The contention that a normal lessor-lessee relationship should be permitted in leases of public property must give way to the constitutional rights of citizens as a whole."

Granted D.T. & permit mf.

Department of Conservation & Development v Tabe 231 F.2d 615, CA 4th (1956). aff'd above per curiam.

p'l based on present future use

Decree below - p616 "that if said park or any part thereof is leased, the lease must not, directly or indirectly operate so as to discriminate against the members of any race."

Since the park here could not be operated profitably as such (deny) leases and leasing was being contemplated for that reason, it was proper to insert in the decree a provision which would protect the rights of Π's in the event of lease.

Phony Burlington Plaing — affirmative immediate
Closing by private purchaser)

"Gov't market"

N.L.R.B. v Darlington Mfg. Co. 994. 85 Sup Ct Rep 994.
(Harlan) (5th Circuit)

NLRB - order (revised, set aside by Ct of Appeals) → found respondent guilty of unfair labor practice by reason of having permanently closed its plant following petitioner union's election as the bargaining representative of Darlington's employees.

1956 - Textile workers union incl org campaign.
- company resisted organizing - including threats to close if union won repres election.
succeeded 9/6/56 - comp 10/17 decided to liquidate.
refusal to bargain

Altn argument - Darlington part of Dorothy McCulloch (McCulloch anth-union) - D-M violated NLRA by closing part of its business for a discriminatory purpose.

NLRB 998

We hold that so far as the Taft Act is concerned, an employer has the absolute right to terminate his entire business for any reason he pleases, but disagree with Ct of Appeals that such right includes the ability to close part of a business

no matter what the reason." Renaud & BC —

Mgmt prerog; sound business judgmt taking v discriminatory.

No right to terminate whatever impact on concerted activity — "if the decision to close is motivated by other than discriminatory reasons".

... If discriminatorily motivated in comparison with their literal language of §8(a)(3).

Southport Petroleum Co v NLRB — Of bona fide discontinuance & bona change of business v disguised continuance of old employer.

Any future benefits to employer eg discourage union activity (a spiteful purpose)

NCA dec — "running strip" = transfer to another plant or open new plant etc. = deci employer action for benefit in future from new employee.

Held: when an employer closes this entire business, even if beyond motivated by vindictiveness towards the union, such action is not an unfair labor practice.

1002

By analogy to those cases involving a continuing enterprise we are constrained to hold ... that a partial closing is an unfair labor practice under §8 (a)(3) if motivated by a purpose to chill unionism in any of the remaining plants of the single employer and if the employer may reasonably have foreseen that such closing will likely have that effect."

Paraphrase: though talked of partial closing do not require organizational integrat of plants or corporat as phrasing to violate 8(a)(3).

"If the persons exercising control over the plant that is being closed for anti-union reasons" —

(1)

Darlington Quotes.

p. 1002

"The closing of an entire business, even though discriminatory, ends the employer-employee relationship. The force of such closing is entirely spent as to that business when termination of the enterprise takes place. On the other hand, a discriminatory partial closing may have repercussions on what remains of the business, affording employer leverage for discouraging the free exercise of [§7] rights among remaining employees of much the same kind as that found to exist in the "runaway shop" and "temporary closing" cases.

paraphrase - But if closing entirely affects no reinstatement - "No such remedy is available when an entire business has been terminated

1002

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(1)

Above if viewed as indep employer — deft of Dart regarded as an integral part of Deeriz Mülhüen.

Deserves partial closing repercussive on remains of business — employer leverage for discouraging free exc of rights among demanding employees like "runaway shop" or "temporary closing".

Remedy of seem backpay available here

Analogy to cases involving contemning enterprise.

Hold

Partial closing unfair labor practice § (a)(3) if motivated by a purpose to chill unionism in any of the remaining plants of the single employer's of the employer may reasonably have foreseen that such closing will likely have that effect.

Parental closing – organiz. integrat unit
prerequisite.

① just business where closures apply to resp
benefit from discouragement of unionization

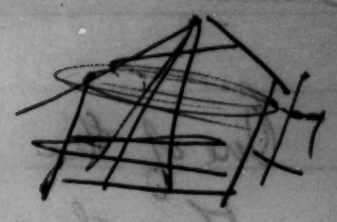
② or act to close plant purpose of moral recruit

(3) Create fear in employees in other lies.

Factors – "purpose" & "effect" (foreseeable)

e.g. employees in other plants 1 (B) the
group.

motivation aimed at achieving
the prohibited effect.
See Local 357 IBT v NLRB.
365 U.S. 667
74 S. Ct. 323



Darlington Mills - Supp. Notes

NLRB - held closing illegal p998.

p 999

Union arg, not board, rejected by CA - "an employer may not go completely out of business w/ the purpose of the Labor Act if such action is prompted by a desire to avoid unionization."

CA answer (apart Bds finding on motive) - "A proposition that a single businessman cannot choose to go out of business if he wants to would represent such a startling innovation that it should not be entertained w/ the clearest manifestation of legislative intent or unequivocal judicial precedent so construing the Labor Act" We find neither.

p1000 AFL-CIO amicus brief - Darlington's action similar to discriminatory tenure, which is prohibited "because designed to frustrate organizational efforts, to destroy or undermine bargaining representation, or to evade the duty to bargain".

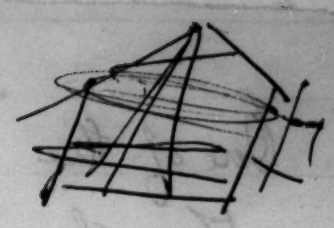
One of the purposes of the Labor Act is to prohibit the discriminatory use of economic weapons in an effort to obtain future benefits.

Talk about "bona fide" termination.

Liquidation of Darlington indeed employer not unfair labor practice but is so if integral part of Deering Milliken enterprise.

1002 "The closing of an entire business, even though discriminatory, and the employer-employee relationship; the force of such a closing is entirely spent as to that business when termination of the enterprise takes place. On the other hand, a discriminatory partial closing may have repercussions on what remains of the business, affording employer leverage for discouraging the free exercise of § 7 rights [sic. 29 USC § 157 (1956 ed) = right to join union & engage in collect bargain) among remaining employees of much the same kind as that found to exist in the "runaway shop" & "temporary closing" cases.

Remedy - to cease - reinstatement of discharged employees in other parts of the business.



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(8)

NLRB - Darlington Board - purpose & foreseable effect.

showing of motivation..

"We have heretofore observed that employer action which has a foreseable consequence of discouraging concerted activities generally does not amt to a violation of §8(a)(3) in the absence of a showing of motivation which is aimed at achieving the prohibited effect. See Coral 357 U S 667, 74 SCt 323 Cincinnati at 677, 74 SCt 540.

Dr B of T v NLRB 365

Purpose case

Perrington v. Plummer

Plummer v Casey 148 F Supp 326. (1955)
(U.S. D.Ct, S.D. Texas)

① Claimed right of Π's to patronize cafeteria maintained in Courthouse of Harris County, Texas. Δ = Ct Official & Perrington = lessee & operator of cafeteria.
Right enforced.

§1331
+1343
jurisd

Swimming pool cases - Kansas City Mo v Williams, 8 Cir. 205 F.2d 47; Lawrence v Hancock, D.C. 76 F Supp. 1004; Culver v City of Warren 84 Ohio App 373, 83 N.E.2d 82.

NB 329. - "reasonable purpose"
Right of refusal of service of private restaurateur required "good cause":
↓ for here County lease bona fide (not colorable & spurious device designed solely to permit unlawful segreg) & the exclusion of Π's act of Perrington, lessee, alone.

P 329

Purpose; knowledge, Duty under (R Act)

But ... "Conceding for the moment that a restaurateur @ common law may arbitrarily select his clientele, in my judgement, that privilege does not extend to the Δ Derrington under present circumstances. It must be borne in mind that the lease to Derrington was one of long duration. In operating the cafeteria upon the Courthouse premises, he does so side by side with all other County offices + instrumentalities. These facilities were installed by the county and leased to Derrington, to serve as a convenient eating place for those having business in the County. In acquiring the concession under these circumstances Derrington was charged with notice of these obvious facts. He had actual knowledge of the pendency of this action when he renewed & ~~adopted~~ accepted the present lease. To adopt the language of the Court in Nash v Air Terminal Services (D.C. E.D. Va, 85 F. Supp 545) the operation of the cafeteria here is to close in origin & purpose, to the f(x)ds of the County Government to allow the concessionaire the right to refuse service w/t good cause.

~~What is~~

(3)

Plummer

p329 County enjoined from renewing or extending present lease, executing new lease, or otherwise diverting itself of agmt & control of the premises w/ 1st specific assurances that facilities will be made available to the use of colored persons under circumstances & conditions, substantially equal to those afforded members of the white race."

Court enjoined from order to exclude members of colored race solely for reason of race or color.

Derrington v Plummer 240 F2d 922 (aff'd below) (4)
USCA 5th 1956. (Cert Denied 1957 77 SCt 680).

Acts of vac discr are those of Derrington, lessee.

On merits decisive Q is whether lessee action = private or State action.

p925 Non-controlling principles: County may in good faith lawfully sell & dispose of its surplus property, & its subsequent use by grantee not State action

When no purpose of discrim, no provision in the enterprise or reservation of control by the county, it may lease for private purposes property not used nor needed for county purposes, and the lessee is student in operating the leasehold would be merely that of a private person. (V/B)

p925.
Assume No purpose of discrim or reservation of control etc "... the basement of the courthouse can by no means be termed surplus property not used nor needed for county purposes."
"To the contrary, the courthouse had just been completed, built with public funds for the use of the citizens generally, and the part of the basement had been planned, equipped and furnished by the County for use as a cafeteria. Without more justification than is shown in this case, no court could countenance the diversion of such property to a purely private use." (Some express purpose for benefit of citizens = State action.

11/13

Again - covenants OK as betw priv indiv but can it be enforced by cts for unconstitl purpose - (1)

See Shelley v Kraemer

Equal Protection

~~Norcé~~ "Quotas"

Shelley v Kraemer. (1948) 334 U.S. 1.

Q: validity of ct enforcement of private agmts: restrict covenants - purpose the exclusion of persons of designated race or color from ownership or occupancy of real prop?

P's Request for relief - restrain D P's from taking possession of property - & divest them of title & revest title in someone else, eg. original grantor. P's in occup when Sup Ct of Mo granted.

Does EP of 14th unlawful prev enforcement by state cts of rest covenants based on race or color ---

Corrigan v Buckley 271 U.S. 323 (1926) - only const issue as to gov't / action.

"This Court concluded that since the ~~[illegible]~~ inhibitions of the constitl provisions invoked apply only to gov'tl action, as contrasted to action of private individuals, there was no showing that the covenant, which were simply agmts between private property owners, were invalid."

Shelley not reflective on above since: no adjud on merit of Corrigan constl issue - here not issue of validity of priv agmt but of the jud enforcement of them.

Sumts wrt 14th of municipal control over property rights:

p11 (1). Buchanan v Warley: 245 U.S. 60 (1917) - good for Equal Prot City order unconstl denied to colored right to occupy houses in blocks in which greater # occupied by whites - similar rest on whites in rt blocks greater # occupied by colored.

p12 (2). Harmon v Tyler 273 U.S. 668 (1927) constl BoW, invalid order forbade Negro establ home in white comm vice versa

Above presume P - right of white sellers to dispose of property free from restriction as to poss purchasers based on color.

Also offensive to rights of those (N's) desiring to occupy a dwelling.

Richmond v Deans, 281 US 704 (1930) Negro barred from occupancy of property by ordinance like Buchanan got inj relief by enforcement of order as violative of 14th.

Shelley ③.

p11. "It is likewise clear that restrictions on the right of occupancy of the sort sought to be created by the private agreement in these cases could not be squared with the requirements of the 14th Amendment if enforced by state statute or local ordinance". (Buck etc follow this struct).

Shelley distinguish from above 'cases not actions by state legis or city counc. ... here parties of state = enforcement of rest (def in agmts between priv individ).

p14. Then decides fed action = state action.
pp 8.

p21.-22.

"Respondents urge, however, that since the state courts stand ready to enforce restrictive covenants excluding white persons from the ownership or occupancy of property covered by such agmts, enforcement of covenants excluding colored persons may not be deemed a denial of equal protection of the laws to the colored persons who are thereby affected."

Su. 28. It should be observed that the restrictions relating to residential occupancy contained in ordinances involved in the Buchanan, Harmon & Deans cases, cited supra, and declared by this Court to be inconsistent w/ the requirements of the 14th Amendment applied equally to white persons and Negroes.

NB/ pp 21-22

This contention does not bear scrutiny. The parties have directed our attention to no case in which a court, state or federal, has been called upon to enforce a covenant excluding members of the white majority from ownership or occupancy of real property on grounds of race or color. But there are more fundamental considerations. The rights created by the first section of the 14th Amend are, by its terms, guaranteed to the individual. The rights established are personal rights." It is therefore, no answer to these petitioners to say that the courts may also be induced to deny white persons rights of ownership & occupancy on grounds of race or color. Equal protection of the laws is not achieved through indiscriminate imposition of inequalities."

effect

149 F. Supp 562. (1957) (golf course case).

Simkins v City of Greensboro

good case

City of Greensboro + City Bd of Ed - lease contract golf course leased to Gillespie Park Golf Club a non-profit corporation organized solely for purpose of taking the lease & maintaining & operating the course as a public golf course.

Membership rules neglected where played the non-members.

Cl. ... (1) are π's as citizens & taxpayers of City of Greensboro, entitled to privilege of playing on Δ's golf course as long as it is owned and used for the convenience of the citizens of Greensboro?

(2) Can Δ's avoid equal treatment to π's in use of facility by leasing it to a private corporation or can the lessee deny π's the right to play solely on act of color & thereby accomplish a result which is denied to the owner?

Concede Δ ordinarily not required to furnish golf course for citizens.

256 U.S. 73, 52 S.Ct. 484, 487, 76 L.Ed. 984

Cites Nixon v Condon, that election laws could not be delegated to a pol organization to enforce it to deny Negroes rights in primary — action of organization = State action = 14th Amen —

Cardozo:

"The test is whether they are to be classified as agencies of the state to such an extent and in such a sense that the great restraints of the Constitution set limit to their action. — etc.

See Rice v Elmore 4 Cir 165 F. 2d 387.

4th Cir — public parks controlled same principle can't be as public.

Dawson v Mayor & City Council, Baltimore 220 F 2d 386, aff'd 350 U.S. 877, 76 S.Ct. 133, 100 L.Ed 774.

etc.

N13 Lawrence v Hancock, D.C. 76 F Supp. 1004, 1009 —

"It is not conceivable that a city can provide the ways & means for a private individual or corporation to discriminate against its own citizens. Having

set up the swimming pool by the authority of the legislature, the city, if the pool is operated must operate it itself, or if leased, must see that it is operated w/t any such discrimination.

looks at Motive - "It 565 also lends powerful weight to the inference that the lease was resorted to in the first instance to evade the city's duty not to discriminate against any of its citizens in the enjoyment or the use of the park. The threatened sale is the procedure pursued in Clark v Flory.

Lessee must not discriminate.

An injunction permanently restrain Δ's from discrimination on account of color or long as golf course owned by these agencies is operated for the pleasure & benefit of the public, these agents, lessees, servants, & employees.

Citizenship ... or the manner whatever
advantage or privilege one citizen in
the US may enjoy through his liberty
secures the equal right of each citizen
without regard to race, color, creed.

Leave.

Lawrence v Hancock.

Lawrence v. Hancock

"It is clearly but another in the long series of strategems which governing bodies of many white communities have employed in attempting to deprive ~~Negroes~~ the Negro of his constitutional birthright, the equal protection of the laws." 76 F Supp 1004, 1008

Culver - p. 88 "Here we have a set pattern where all the Δ's, municipal officials as well as the veterans service clubs, have quite obviously conspired to prevent the use by plaintiffs and other colored persons of a public recreational facility. The power to ~~leave~~ does not include the power to discriminate against members of a minority race in the exercise of their constitutional rights

p. 89 - city syllabus of Oyama et al v. California 332 U.S. 633, 68 S.Ct. 269

"In reviewing a case in which fed C rights are asserted, U.S. S.Ct. must inquire not merely whether those rights have been denied in express terms but also whether they have been denied in substance and effect, and must review independently both legal issues and those factual matters with which they are commingled

Lawrence v. Hancock 76 F Supp 1004

[W Va follows minority view that swimming pools a proprietary, not gov. function. So has the right to lease - but -]

1008 " The power to lease does not include the power to discriminate against members of a minority race in the exercise of their Civil rights "

... " The provisions of the statute are clear that the Board of Park Commissioners to be appointed shall operate the pool in a manner most conducive to the well being of the general public. "

... " Justice would be blind indeed if she failed to detect the real purpose in this effort of the City of Montgomery to clothe a public function with the mantle of private responsibility. " The Voice is Jacob's Voice " even though " the hands are the hands of Esau. " It is clearly etc.

1009 [this goes against us -] " Having set up the pool by authority of the legislature, the City, IF THE POOL IS OPERATED (Emph. supplied) must operate it itself, or if leased, must see that it is operated w.o. any such discrimination

See Fla. Constit again)

What is tax situation in Tallahassee Prince Edward

Prince Ed 377 U S 218, 84 S Ct 1226 (1964)
592. May 25, 1964. Oct Term 1963.

Transcript of Record. Supreme Ct of United States.
Oct Term, 1963. 592. Griffin vs County School Bd of Prince Edw Cty.

Amended suppl compl. # 14, p 26. §129-134 constitutional obligation to maintain free public schools.

Memorandum Opinion, Aug 23, 1961.
Whether or not Prince Edward County can close and refuse to maintain its heretofore existing free public school system in order to avoid the racial desegregation prohibited by the Sup Ct in Brown ...

Arg ①. Closing of pub schools in Prince Edward while maintain in every other city & county in State, violates 14th amendment —
James v Almond 170 Fed Supp 331
While State operates school system no one school or grade can be closed.

p. 57. The question that must ... be just determined: Can the public schools, heretofore maintained in Prince Edw Cty, be closed in order to avoid the racial discrimination prohibited by the 14th amendment?

Left interpret of Va Const & statutes to State courts.

p61. Without questioning the purposes or motives of Bd of Supervisors - end result of every action taken by that body was designed to preserve separation of the races in the schools of Prince Edward County.

Did not hold County ordinances (Ed grant in aid; tax credit) facially unlawful - became so when used to accomplish unlawful end (segreg).

purpose

memo open - Lewis, U S Dist Judge (3)
Va, Alexandria, Aug 23, 1961.

Prince Edw Record

denied my relief as to leasing or transfer of property since no ever Schol Bd intent.

(2) dismissal of this cause for action - May 24, 1962.
Oren R. Lewis, U. S. D.J.

Issue of legal closing still open in memo Jun July 25, 1962.
Dismissal denied.

p 73
D's - argue that pub schools owned, operated & mgd by local schl boards - not by state agency & ∴ 14th Amend'n apply. (Cf regents.)

Action of Bd of Supervisors to refuse to levy taxes or approp $ w/o acquiescence of State Bd of Ed, Supt of Public Instruction & Schl Bd of Prince Ed, & Div Supt.

"In these circumstances true force is not on the Bd of Supervisors but on the above-named school officials, all of whom directly or indirectly are state officials. They cannot abdicate their responsibilities either by ignoring them or by merely failing to discharge them, whatever the motive may be. Bolton v Washington

Parking Authority. 365 U.S. 715 (1961).

Quotes Bush v Orleans Parish School Board
190 F. Supp 861 (1960)

"... equality of opty to ~~[illegible]~~ education.
... Brown - "accordingly, every citizen of the United States, by virtue of his citizenship, is bound to respect this constitutional right, and ... all officers of the state, more especially those who have taken an oath to uphold the Constitution of the United States, including the governor, the members of the state legislature, judges of the state courts, and members of the local school boards, are under a constitutional mandate to take affirmative action to extend the benefit of this right to all those within their jurisd.
U.S. Const art VI, cl. 2, 3. Cooper v Aaron 358 US 1.

∴ local officers responsible.

Order, Oct 10, 1962. Lewis. p 85
① closing to avoid previous race discr.
② closed unless legally req to reopen.
③. when Negros closed formed.
④ all other children in state have p schools.
⑤. § 129 Va Const req's state maintain & op pub schs.
⑥. appropriat contemp.
⑦. that Off given resp by Con to estab & maintain school system.

(5)

Prince Edward Reed

p. 86 (a). State wide basis pub schl syst.
(b). Large % per pupil from State rev.
(c) that schl officials cannot absolve their responsibilities merely by ignoring them or by failing to discharge them, whatever the nature ...

Cf having concluded that the closing of the pub schools in Prince Edward County, under the circumstances and conditions there existing, is prohibited by the 14th Amendment of the Const of US —

Ordered. that ps of Cty may not be closed to avoid the effect of the law — while Va permits other public schls to remain open at the expense of the taxpayers —
denied motion to dismiss etc.

Appeal in respect to dest of delay of compliance in holding.

Arg for dismissal of amended supp compl - p95:
Fed jud wld use it my power to ex purely legislative functions - amending ordinances & laws - also 14th neg - & this would extend in area of individual & private action & choice.

p129. US intervention (RFK) denied p175. April 26, 61.
Dist Cts of U.S. have jurisdiction to enjoin interference with and obstructions to the implementation of their orders requiring operation of public schools on a racially non-discriminatory basis.
Faubus v US 254 F. 2d. 797 (C.A. 8, 1958), cert den. 358 U.S. 829.
Kasper v Brittain, 245 F. 2d 92 (C.A. 6, 1957), cert den. 355 U.S. 834; etc.

(Remember prior court order reg ~~the~~ pub operation w/t discrim!)

p209. 4th Cir, CA #8537. Aug 12, 1963.
Haynsworth Cir. Judge.

p215-266 Ante, correspondence

Abandonment of public schools not a denial of equal protection tho more difficult for poor to get substitute — a result may be absence of integrated classroom.

p216. This we held in a different context in Tonkins v. City of Greensboro, 4 Cir; 276 F. 2d. 890 affirming 162 F Supp 549. , Simkins , Clark v Flory 4 Cir. 237 F. 2d 597. (sale of park)

"Other courts have clearly held that a municipality which had been ordered to desegregate facilities which it had operated, may abandon the facilities wit violating the injunctive order or the right of the Negro P's. Hampton v City of Jacksonville, 5 Cir. 304 F. 2d 319; Gilmore v City of Montgomery, 5 Cir. 277 F. 2d 364 & see Willis v Harris County, E.D. Texas 202 F. Supp 549.

But city can't deserve right to itself in desegregation. ("state action" - Jacksonville case.

217

It's see closure motivated by May 59 opin →
N.C. desegr order. (cf. Fla date of pool closing & Title III CRA '64).

Mad
Determination under state law of Virginia's role in the operation of public schools in Virginia.

US Briefs 1963 592 2-593.

Certiorari - Petitions: p. 17-8.

p. 17. "Swimming pools & parks are not schools.
Hence Tonkins & Gilmore are inappropriate.

p18.
Certainly there is no decision holding that a state agency may abandon the public schools for the purpose of avoiding compliance with the law of the land, and to the extent that Tonkins & Gilmore are authority to the contrary, they promote confusion & conflict.

Prince Edward

Petitioner's brief: cites Burton @ 725 - State "waiten" - wegw / state behind desegregation

p14. Distng "local" obligat - for park recreat facilities & statewide educat obly.

"And while it might be argued, insofar as local recreational facilities are concerned, that the abandonment of such facilities to avoid compliance with a court decree is not constitutionally actionable, even though other localities in the state continue to provide recreational facilities..

See Tonkin ; City of Montgomery.

Reasons for relief. p32
① . discontinuance of pub educat to avoid pet's right to equal educ opty
② . Geog discrim 'cause schools elsewhere in Commonwealth.
③ . State action thru tax credit etc.

Reopen - 11th amendment no bar.

Prince Edw

Griffen v. County School Board of Prince Edward County, et al.
377 U.S. 218, (84 SCt 1226 (1964))

Orig complt - closing
Supp " - ag closing to private.

Va Laws to resist desegreg after 1954. - series of legis programs
56, 59 ff.
Pub schools - 1959-60 mdlp
1960 - tuition grants
property tax credits (25%) for contrib.

1961 - suppl cmplt -

~~Look at local govt law~~

Under circumst here, closing Prince Edward County schools while public schools in all other counties of Virginia were being maintained denied the petitioners and the class of Negro students they represent the equal protection of the laws guaranteed by the Fourteenth amend.

Supplement part of orig (1951) desegreg plaint
- charged (orig - racial seg in pub schools)
that Prince Edward still using its funds
along w state funds to assist private
schools while closing down same time
pub schs - all / to avoid desegreg
order in Brown case. (motive looked at)

p 1232. "Since 1959, all Virginia counties have had
the benefits of public schools but one: Prince
Edward. However, there is no rule that counties
as counties, must be treated alike; the Equal
Protection Clause relates to equal protection of
the laws "between persons as such rather than
between areas." Salsburg v Maryland 346 U.S.
545, 551, 74 S. Ct 280, 283, 98 L. Ed. 281 (1954).
governed by circumstances of each case.

1233 — Virginia law here (law holding the right to
operate public or private schools) — unquestioned
treats school children of Prince Edward
differently from the way it treats the school
children of all other Virginia counties.
— State law involved, but not in our case. Decision differs
here if county just decided to close, w.o. state law authorizing?

. . .

1233

Prince Edward children must go to a private school or none at all; all other Virginia children can go to public schools. Closing Prince Edward's schools bears more heavily on Negro children in Prince Edward County since white children there have access to private schools which they can attend, while colored children until very recently have had no available private schools, and even the school they now attend is a temporary expedient. — result = racially seg schools though being private - benefiting ~~state~~ county and state support.

State wide ~~discon~~ discretion in deciding whether counties heated alike, whether laws should operate statewide (Salsburg, op cit)

$\boxed{\text{Motive}}$: "But the record in the present case could not be clearer that Prince Edward's public schools were closed and private schools operated in their place with state and county assistance, for one reason, and one reason only: to ensure, through measures taken by the

County and the State, that white and colored children in Prince Edward County would not, under any circumstances, go to the same school. Whatever non racial grounds might support allowing a county to abandon public schools, the object must be a constitutional one, and grounds of race and opposition to desegregation do not qualify as constitutional. (p. 233)

Closing → private (state funds) (Holding?)

Relief:

Δ's duties related to financing, supervision, or operation of schools – or lack of.

Dist Ct – enjoined payment of city tuition grants or giving tax exemptions to producing applicant for state tuition grants –

" Power to do so.

Long established Sh. actions by a county can be maintained in U S cts in order to vindicate federally guaranteed rights.
e.g. Lincoln Cty v Luning, 133 U.S. 529, 10 S Ct 363 (1890); Kennecott Copper Corp. v. State Tax Comm'n, 327 U.S. 573, 579, 66 S. Ct 745, 748, 90 L. Ed. 862 (1946).

Injg by tuition & loss credits while p schools closed - approp & nec because essentl pts of county's program, sufficient thus far, to deprive it's of same a dr of pub schl education enjoyed by children in every other part of Virginia.

Can for some reasons require Supervs to exercise the power that is their to levy taxes to raise funds adequate to reopen, operate and maintain w/o racial discrimination a public school system in Prince Edward Cty like that in other Va Cties.

Harlan & Clark disagreed the Fed Cts had power to order reopening of pub schls.

Torcaso v. Watkins (1961) 367 U.S. 488, 81 S. Ct. 1680

— Maryland Constitution requiring holder of public office to declare belief in God held un-C. Appointee by Governor to office of Notary Public.

— [Argue that no right to public office, but can't be denied public office for invalid reason.]

— see Wieman v. Updegraff 344 U.S. 183, 191 and United Public Workers v. Mitchell 330 U.S. 75, 100

"The fact, however, that a person is not compelled to hold public office cannot possibly be an excuse for barring him from office by state-imposed criteria forbidden by the Constitution. This was settled by our holding in Wieman v. Updegraff 344 U.S. 183. We there pointed out that whether or not "an abstract right to public employment exists," Congress could not pass a law providing "... that no federal employee shall attend Mass or take any active part in missionary work."

Right - but for discretion perspective.

Wieman et al v. Updegraff et al
(Appeal from S.Ct. of Okl.) (1952)
344 U.S. 183

- oath that not now, not in last 5 yrs member of org. on Atty. Gen's list un-C. May have belonged for innocent reasons.

Garner v. Bd. of Pub. Works 341 U.S. 716 (1951)
Adler v. Bd. of Ed 342 U.S. 485 (1952)
Gerende v. Bd. of Supervisors 341 U.S. 56 (1951)

all involved knowledge ~~of subversive~~ that organization was on the subversive list, or that it had subversive aims. But membership may be innocent.

Adler and U.P.W. v. Mitchell seem to support idea that there is no right to public ~~appointment~~ employment etc. but

192 "We need not pause to consider whether an abstract right to public employment exists. It is suff. to say that C protection does extend to the pub. servant whose exclusion pursuant to a § is patently arbitrary or discriminatory.

~~Halter~~

Hampton v. City of Jacksonville

It would be a novel theory of tort liability that denied recovery to a guiltless plaintiff solely because the negligent Δ was equally injured, and a new and strange theory that denied recovery for breach of K on the sole ground that Δ had deprived himself as well as π of the "benefit of the bargain". Defendants may not deny π's access to all pools either to avoid integration or as a tactic to discourage Negroes in their lawful attempts to exercise their C-al rights, and then excuse themselves on the ground that Whites as well as Negroes will have to use [whatever private swimming facilities are available to them.] [segregated private swimming pools]

1. Look up Bonie v. S.C. – trespass
2. TRESPASS – ulsts, C.T.S. etc.
3. Bankruptcy Act – what sort of things may court order as to property?

– See St. Petersburg v. Along (CA 5 Fl) 238 F 2d 830 cert denied 353 U.S. 922
– Watson v. Memphis 373 US 526 10 Led 2d 529

15. Am Jur 2d – Civil Rights §47
— 14th A. does not req. that a state must operate racially integrated schools. but only that any school that it operates, maintains, or supports be open to all regardless of race. [Briggs v. Elliott (DC. SC) 132 F Supp 776] On the other hand, a state statute providing for the closing of public schools because of the presence therein of children of different races is invalid if, at the same time, the state keeps other pub. schools open on a segregated basis, because such a S discriminates against all children, W + N, in the locality where the schools are closed [Hall v. St. Helena Parish Sch. Bd. (DC La) 197 F Supp 649, aff 368 US 515 7 Led 2d 521
James v. Almond (DC Va) 170 F Supp 331 app dismd 359 US 1006 3 Led 2d 987

However no state action or statute involved here. A city decision, – so not applicable ?]

Where school officials have been directed by a fed. ct. order to carry out an approved plan for the integration of the schools under their control, they will be enjoined from leasing the schools to a private corp. for the operation of a white only school, and from aiding the corp. in obtaining a teaching staff, since the integration order impliedly prohibits their preventing in any way the integration of the public schools. [Aaron v. Cooper (CA 8 Ark) 261 F2d 97]

Gusting

big state action case

[What about closing? Victim? And of course here no ct. order involved]

Jurisdiction 28 USC §1343

15 Am Jur 2d

- p. 460 motion to dismiss - complaint - if a 14th A - must allege purposeful discrimination between persons or classes of persons and an averment that the Δ's acted wilfully and maliciously or unlawfully + conspiratorially, is insuff. to allege such a discrimination

equal protection

- if due process claim needn't allege discriminatory purpose

460 Facts true, but not allegations of mal etc. ~~which~~

Is purpose a fact? yes?

Injunction

(1946)

Porter v. Warner Holding Co. 328 US 395

granted injunction to restrain future violation of rent control & ordered restitution of illegally collected rents

2) Equity §88 - where the public interest is involved, the inherent equitable powers of a Fed. dist. ct. assume an even broader and more flexible character than when only a private controversy is at stake

citing Virginian R. Co. v. System Federation, R.E.D, 300 U.S. 515, 552, 81 Led 789, 802, 57 S.Ct. 592

Virginian (1936) - Ct. has power to issue injunction ordering co. to bargain collectively with plaintiff union, and only with plaintiff union

7) Equity §88 - Courts of Equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved. - (Cites 7 cases)

Porter v. Lee 328 U.S 246, 90 Led 1199 (1945)

injunction ordering restoration of status quo. Δ evicted T in force of pending suit to enjoin eviction

Injunction 8/23 MI - Where a Δ w. notice in an injunction proceeding completes the act sought to be enjoined, the court may, by MI, restore the status quo.

~~Hoxie Supp 419.~~

Duty.

~~Only have to reason one steps beyond teaching.~~

~~It is settled law that~~

Significance of Article VI, Clause 3 w respect to municipal officers?

See denial of mot to dismiss opin [135 F Supp 296].

Brewer v. Hoxie School District No. 46
238 F2d 91 (CA, 8th, 1956) Arkansas.

p. 93. School Bd det after Brown the despite State Seg statutes - oath requirement of VI, 3, to VI, 2 (supremacy) - right & duty to chge to nondiscrim system.

Action for injunctive & restrain obstruct & interf with school board's desegregation practice (July 1955).

"Plaintiffs' Federal Right"

p 98. "The Π's being bound by constitutionally imposed duty and their oaths of office to support the 14th Amendment and to accord equal protection of the law to all persons in their operation of the Hoxie schools must be deemed to have a right, which is a federal right, to

be free from direct interference in the performance of that duty.

p99. "Plaintiffs are under a duty to obey the Constitution. Const. Art. VI, cl. 2. They are sworn by oath or affirmation to support it and are mindful of their obligation.

(Its purpose to show right free from interf.; but accepts notion of "duty")

Right to Surveillance: ? √ Rule.

p100. "The existence of a Constitl duty presupposes a correlative Constitl right in the person for whom the duty is to be exercised." cite Logan v United States 144 US 263, 12 S.Ct 617, 36 L.Ed 429 - upholding 18 USC 241 basis for convicting 3 men charged in mob violence as prisoners in custody of US Marshal. "The Court held that the prisoners, who were awaiting trial for an offense against the United States, had a federal right to be protected in their persons while in federal custody." The Court said 144 U.S. at page 284, 12 S.Ct at page 623, 'that the existence of the duty on the part of the government to protect its prisoners "implies a corresponding right of the prisoners to be so protected." Cf. U.S. v Cruikshank, 25 Fed. Cas. pages 707, 709, No. 14,897, affirmed 92 U.S. 542, 23 L.Ed 588.

CR Act 1964
Statute

Public Facilities (Civil Rights Act 1964). 42 USCA 2000b.

(a) Whenever the Attorney General receives a complaint in writing signed by an individual to the effect that he is being deprived of or threatened with the loss of his right to the equal protection of the laws, on account of his race, color, religion, or national origin, by being denied equal utilization of any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, other than a public school or public college as defined in § 2000c of this title, and the AG believes the complaint is meritorious ... etc.

July 2, 1964 (signed).

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Statute

Public Facilities (Civil Rights Act 1964). 42 USCA 2000b.

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July 2, 1964 (signed).

~~3:30-3:45~~ 3 1/2 hrs.

(1)

Florida Statutes Annotated

165.08. ~~Powers of corporation~~ (municipal).

The provisions of 165.01 - 165.07 having been complied with, the persons therein named, and their successors, shall thereupon constitute and become a body corporate with full power and authority to take and to hold property, real personal and mixed, and to control and dispose of the same for the benefit and best interest of the corporation aforesaid, to sue and be sued, plead & be impleaded, and to do all such other acts and things as are incident to corporate bodies.

Chapter 418. ~~Pa~~ Playgrounds and Recreation Centers

418.02. The governing body of any such municipality or county may dedicate and set apart for use as playgrounds and recreation centers and other recreation purposes, any lands or buildings, or both, owned or leased by such municipality or county and not dedicated or devoted to another or incompatibleent public use; and such municipality or county, may, in such manner as may now or

hereafter be authorized or provided by law for the acquisition of lands or buildings for public purposes by such municipality or county, acquire or lease lands or building, or both, within or beyond the corporate limits of such municipality or county, for playgrounds, recreation centers and other recreational purposes and when the governing body of the municipality or county so dedicates, sets apart, acquires or leases lands or building for such public purposes, it may, on its own initiative provide for their conduct, equipment, and maintenance according to provisions of this chapter, by making an appropriation from the general municipal or county funds.

Notes of Decisions

4. Inconsistent public uses.

Strictly speaking, there can be no dedication to private uses or to uses public in their nature but enjoyment of which is restricted to a limited part of the public. Burnham v. Davis Island Dr. Corp. 87, So. 2d 97 (1956).

Florida Statutes Annotated (cont'd)

418.03. Supervision
governing body vest power in school boards, park board, etc.

418.04. Playground & Recreation Board.
418.05. Cooperation with other units & boards.
418.06. Gift, grants, devises & bequest
418.07. Issuance of bonds.

418.08 Petition for referendum.

Whenever a petition signed by at least 5% of the qualified & registered voters in such municipality or county shall be filed in the governing body of such municipality or county, requesting the governing body of such municipality or county to provide, establish, maintain and conduct a supervised recreation system and to levy an annual tax for the conduct and maintenance thereof of not ~~less than one-half~~ more than one mill on each $100 ~~or more than one mill on each dollar~~ of assessed valuation of all taxable property

within the corporate limits or boundaries of such municipality or county, the governing body of such municipality or county shall cause the question of establishment, maintenance and conduct of such supervised recreation system to be submitted to the qualified ~~voters~~ electors who are freeholders to be voted upon at the next general or special election of such municipality or county; provided, however, that such question shall not be voted upon at the next general or special election unless such petition shall have been filed @ least 30 days prior to the date of such election.

418.09. Resolution or ordinance providing for recreation system:

Upon the adoption of such proposition by a majority of those voting on it at an election, the governing body of such municipality or county shall, by appropriate resolution or ordinance, provide for the establishment, maintenance and conduct of such supervised recreation system as they may deem advisable and practicable to provide & maintain out of the tax money thus voted. The said governing body may designate, by appropriate resolution or

Florida Stat Annotated (cntd)

ordinance, the board or commission to be vested with the powers, duties and obligations necessary for the establishment, maintenance and conduct of such recreation system as provided for in this Chapter.

418.10 Tax levy

The governing body of such municipality or county adopting the provisions of this Chapter at an election and until revoked at an election by a majority of the qualified voters who are freeholders, shall thereafter annually levy & collect a tax of not less than the minimum nor more than the maximum amount set out in the said petition for such election; which tax shall be designated as the "playground and recreation tax" and shall be levied & collected in the manner as the general tax of such municipality or county.

imply (no) power to close.

418-11. Payment of expenses and custody of funds:

Weds - Objection
Municipal Corporation

(9)

Florida Stats Annotated

Annotation after 165.08.

Laws 1905, c. 5546, §2 & Laws 1921, c. 9095, §1 permitting municip to sell lands held in trust for pub purposes were not violative of constitl inhibitions against loaning credit.

Courts will not interfere with authorized contracts for sale of land by municipalities except for fraud, illegality or abuse of authority. Bailey v City of Tampa, 92 Fla. 1030, 111 So. 119.

Sherrif

Florida Statutes Ch. 30 § 30.291. 1962

Closing of public facilities upon threat of violence.

(1) The sheriff of any county of the state is hereby authorized to temporarily close any public beach, park or other public recreational facility within his jurisdiction when in his discretion conditions exist which present a clear and present or probable threat of violence, danger or disorder, or at any time a disorderly situation exists which in his opinion warrants such action.

(2) The power of the sheriff in exercising the authority conferred herein shall be full, complete and plenary.

(3) Any public recreational facility closed pursuant to the provisions of this section shall be reopened by the sheriff when the conditions upon which such closing was predicated have abated.

Implications of Chapter 418 of Florida Statutes

Chapter 418, Playgrounds and Recreation Centers of the Florida Statutes grants the governing body of a municipality or County the power to "dedicate & set apart for use as playgrounds and recreation centers and other recreation purposes, any lands or buildings or both owned or leased by such municipality ... and [that] when the governing body of the municipality or County so dedicates ... for such purpose, it may, on its own initiative, provide for their conduct, equipment, and maintenance ..." (418.02)

(italics added)

There is no indication in the rest of this section in chapter that once such initiative to conduct, equip and maintain is taken that the ~~City~~ County may take the initiative to discontinue such operations. If the legislature clearly chose to grant the full power to initiate the creation & conduct of such facilities it could have chosen to indicate the existence of a power to initiate closing. But it did not do so.

But don't other §§ give that authority? or c-law? or implied in §?

therefore according to reasonable
& logical construction of the principle
expressed and implied in the. It is
argued that the governing body of
the city of Tallahassee acted illegally
not only in respect to the 14th
amendment of the U.S. Constitution
but in respect to the statute of
the State of Florida.

The intent of this statute is
obviously to invest in municip the
authority to set up & operate
facilities that the State as a whole
has determined are important for
the health & welfare of its citizens.
Citizens need and interest in the creation
& continued operation of the facilities
is supported by a statutory provision
requiring the county "to provide,
establish, maintain and conduct a
supervised recreation system" and
"to levy an annual tax for the cost & maintenance
thereof" upon petition, signed by
the qualified & registered voters of the
municipality. ~~Up~~ After such a
petition a referendum is mandatory
as is the establishment of such a
supervised recreation system after an
affirmative vote. ~~There is no~~ No
power ~~tax~~ to stop collection tax or
Earmarking system unless revoked at an
election by a majority of voters. (418 v 10)

— yes, but they still have a recreation system, even if it doesn't have pool anymore.

This whole argument is clever but too "tricky" (Carl) and "iggling piggling"

Bond issue, not tax involved.

~~Florida Constitution~~

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Tallahassee

Florida Statutes

Title XI. County Organization; Officers & Regulations.

XII Cities & Towns

XIII §218. Financial Matters Relating to Political Subdivisions.

XVII §258 State Parks

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§418. Playgrounds and Recreation Centers.

Title XXXI Regulation of Trade, Commerce & Investment.

Swimming or Bathing Places §514.01-§514.08.

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418. Recreation centers 418.02 acquisition & use of land by city town or city.

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~~Title~~ 22.
Ch 7.1.
Grants for Education of Dependent Children -
§§ 22-115.1 - 22-115.14 Repealed by
Acts 1959, Ex Sess. c.53.

Scholarships for Education of Children
22-115.22 - 22-115.28 Repealed 1960.

See Const §141. prohibit such funds.

Louisiana
Title 17 Education
~~Ch 6~~ Part VI Education Expense Grants for
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Acts 1958, No 258, §1-16.
See R.S. 17:2901 - 17:2916.

State cannot give money.

Invalidated - Bush v Orleans Parish
School Bd; D.C. 1961, 188 F. Supp 916.

2901-2916. Repealed. Acts 1962, No 147, §11.
Repealed derived from Acts 1960, 2nd Ex Sess
No 5, §1-16, related to expense grants
for private ed. See R.S. 17:2951.

first state aid to
private non sectarian
elem schools.
Acts 1962, #147 §1

From Government Loyalty v. Security 19:175

232 F2d 688 (1956)

Haynes v Thomas
U.S. Ct of App
Dist of Col Circuit
Dec'd April 19, 1956
No #12807

Suit for declaratory judgment by Haynes seeking an order of reinstatement. Dist Ct dismissed complaint for failure to state a cause.

Haynes appellee
civilian employee of Army — on probation
discharged for security reasons

Is probationary employee entitled to benefit of procedures prescribed by Congress when discharges for security reasons

Gov't contends procedures do not apply during probation. These procedures provided for hearings etc.

Public Law 733 providing procedures refers to permanent employees (2nd proviso)

1st proviso — rough procedure in order st to hearing, 1st d.

not limit itself to permanent employees. But President's ~~and~~ order 10450 ~~affs~~ is interpreted to include the rights of an appellant [certainly not specifically so]

Order remanded as tentatory. If appellee wishes to discharge him, he must follow procedures.

Reversed & remanded

FOOD STAMP CASES, c. 1969

Box 45
Folder 10

y of Wisconsin

Please Retain Original Order

Cincinnati Food Stamp

THE LEGAL AID SOCIETY OF CINCINNATI

(A RED FEATHER SERVICE OF THE COMMUNITY CHEST)
CENTRAL OFFICE 2400 READING ROAD
CINCINNATI, OHIO 45202
(513) 721-3160

January 28, 1969

JAN 31 1969

Scholarship, Education and Defense
Fund for Racial Equality
164 Madison Avenue
New York, New York 10016

Attention: Carl Rachlin, esq., Legal Director
Mr. Richard Klein

Dear Carl and Richard:

Pursuant to my telephone conversation with Richard, I am enclosing all available written information on the Hamilton County Welfare Department Federal Food Stamp Program, covering both welfare recipients and non-public assistance individuals. The enclosures are as follows:

1. A report by the Hamilton County Welfare Department Federal Food Stamp Program Non Public assistance.

2. Two pamphlets covering propaganda on the plan issued by the Food Stamp Certification Center and containing part of the eligibility standards.

3. Two copies of the Hamilton County Food Stamp Program net-income tables, computed by monthly net income and size of household.

4. Two similar tables issued by the California Welfare Department on their Food Stamp Program.

5. The non-assistance application for Food Stamp Program form of the Hamilton County Welfare Department used by the food stamp certification center.

6. The food stamp IBM referral sheet which contains the shelter deficiency and adjusted net income computation sections on which a hypothetical computation has been completed by myself while conferring with Mr. Henry Marchand, the Director of Certification Center here in Cincinnati.

7. Copies of sections 460, 460.1 and 460.2 of the Ohio State Welfare Manuel.

I first call your attention to the IBM referral sheet, wherein a deficiency for shelter costs exceeding the standard, (which is computed by multiplying 30% times the total net income in the household) is allowable as a deduction from the total net income for arriving at the adjusted net income. In addition there is a computation for medical hardship which apparently considers those medical costs over and above the average. Mr. Marchand, did however, state that payments to a Blue Cross plan would be considered part of the medical hardship.

I understand this is common to all Food Stamp Programs around the country for reasons that no one appears to be able to explain. Perhaps you can comment on this.

At any rate, as Richard and I discussed by telephone, it appears that the entire food stamp program of Hamilton County is based on the standards set by the Hamilton County Welfare Department by payments to recipients which in turn is based on the size of the household of the recipient in question. Consequently the maximum monthly net income parmitted for a person who is making application under the food stamp program, who is a non-welfare recipient, or is designated by the food stamp program a non-assistance applicant, is limited under the tables to the maximum monthly net income in the household of a welfare recipient of the same size. In other words if there is one person in the household the maximum net income, monthly, that he may have is $130.00, two persons, $200.00, three persons, $225.00 etc. You will notice from the tables enclosed, from the California Department, that the maximum monthly net income is a good deal greater in that state than it is in the Hamilton County program. Accordingly, it would appear that theres a discrepancy or unequal participation in the food stamp program on a national level being worked against the non-assistance applicants in Hamilton County.

A second attack on the system, which occurs to me, is that for a Welfare recipient, the food stamp programs standards are based on their monthly checks, and this check, in and of itself, represents only 82% of the actual standard as of 1965 for subsistence as computed by the Welfare Department. In other words, the Welfare Department computed the standard for subsistence, based on 1965 levels, and then reduced the payment of these standards to 82% because of the absence of funds at the county level to make 100% payments of standard. Accordingly, the Welfare recipient is forced to purchase food stamps at a level comparable to the amount of payment which he receives on a month to month basis, established by the food stamp tables without taking into consideration the fact that this payment represents only 82% of his

EP: welfare ⊕ non-welfare

actual need for food, clothing and other personal effects. Consequently, the Welfare recipient finds that his purchase of food stamps at a proscribed minimum and maximum, not only unrealistically limits the amount of disposable income which he has for other personal items, since nobody is able to accurately budget their food at the exact month to month level required by the food stamp program itself, but furthermore is limited by the fact that he has only received 82% of that amount which is necessary for mere subsistence, and the purchase of all other personal effects in his budget, in addition to the food.

I am not sure that I am doing a very adequate job in explaining this problem. In an effort to explain my position more visually, I am enclosing sections of chapter 400 of the Ohio State Welfare Manual. I specifically call your attention to sections 460, 460.1 and 460.2 and the chart of standard allowances for both adult and ADC categories in order to make my point. You will note that section 460 speaks of the inability to pay the 100% standard, and you will note that the chart above section 460.2 specifically points out the discrepancy between the standard and the state allowance.

According to Mr. Marchand, it is his understanding that the Welfare Department, who is responsible for computing the basis for the food stamp purchase, considers the actual public assistance check to the recipients and deducts therefrom any sheltered efficiency as outlined in the non-assistance forms which I am forwarding to you. They do not take in consideration, however, of any medical hardship, since each Welfare recipient is provided with a medical card which supposedly permits him to get total medical assistance from the clinic or the General Hospital in this city.

In other words, the Welfare recipients eligibility for the food stamp program is based on his assistance check less sheltered efficiency which might arise as the result of rent payments over and above adjusted shelter costs, on the basis of which he is required to make a purchase of food stamps for the total amount represented by that category under which he falls. Obviously since this assistance check is less than the 100% standard as of 1965 for bare subsistence, it can be readily seen that the recipient is forced to use non-food dollars to purchase food stamps, making it a physical impossibility to live within such a budget which has already been computed at 82% of the minimum standard necessary.

I would appreciate your reflections on this matter, and if you are in agreement and see a valid constitutional attack on this system, that you proceed to draft the necessary application for a three judge panel with accompanying briefs in support thereof, leaving open those sections wherein the personal data of a given individual recipient would be placed.

As of this writing, I have not had an opportunity to review Richard's suggestions as concerns Ohio Revised Code section 2506.01 which appears to provide a method of appeal from a final administrative order, arising out of a fair hearing, to the Common Pleas court of this state. Again, it would be helpful if Richard could do the necessary research into the statute and any cases arising therefrom, and then proceed to dictate a form petition and supporting brief which could be filed and argued before a Common Pleas Court on this theory of appeal. It is anticipated that I would fill in the blanks in terms of the specific client's name and situation and the particular fair hearing order from which I would be appealing. It is further anticipated that I will have such a situation within the next 60 days since I am expecting a final order from two fair hearings which were held last week.

I hope this letter finds both of you in good health and spirits, and I look forward to hearing from you at your convenience.

Yours very truly,

Albert Mechley, Jr.

AM:kr

South Florida Migrant
Legal Services Program, Inc.
305 N. W. 1st Street
Miami, Florida 33128

MAR 4 1969

MARTY

MAR 1969

DADE WELFARE RIGHTS MOVEMENT
STATEMENT OF PURPOSE

We, as a newly formed organization of poor people, are comprised of welfare recipients and other poor people. We have organized because of the State's gross failures; these failures are:

(1) Employees of the Department of Welfare continue to fail to recognize the human dignity of a Welfare applicant and recipient by continuing practices of harrassment, intimidation, and insults.

(2) The State of Florida and its counties have demonstrated that they are not concerned about damage done to human beings which result in human costs. Florida's position in welfare is not one of which we can be proud. Florida has a per capita income of $2,250 placing it 30th among the 50 States. Yet in public assistance the latest HEW figures placed Florida 48th followed only by Alabana and Mississippi. The U. S. average AFDC payment - 41.85. Florida average - 21.51. This means that the children receiving aid are given less than $1.00 per day to meet all needs. This is 45% less than the U. S. Governments own poverty standard. The U. S. Department of Agriculture reports that $1.00 per day is

the minimum needed for food alone. The proposed 69-70 budget would raise this figure only to 28.39. The average general assistance payment in the U. S. is 31.61. Florida is one of only nine states in the nation which provides no general assistance.

(3) The failure of the State of Florida to recognize the poor as equal citizens, by refusing to appoint welfare recipient representatives on Welfare Advisory Boards, by passing prohibitory sales taxes which prove to be an unequal burden on the poor, the least able to pay, and failure to implement Federal programs which benefit the poor such as the Federal Food Plan and Medicaid.

(4) And, further, the callous and cavalier attitude the State and Local Divisions have toward Welfare Recipients by failing to grant full 100% assistance to recipient, for what the agency determines to be needs. Only 60% is allowed although other income is not available or is allowed to be used as a supplement.

Therefore, on December 4, 1968, we poor, with representatives from Homestead, Perrine, Goulds, South Miami, Liberty City, Edison-Little River, Brownsville, Opa-Locka,

and downtown Miami joined into the Dade Welfare Rights Movement. We are orgainized with a Charter in a form or a union, with dues paying on a monthly basis. We are securing affiliation with the National Welfare Rights Organization at 1762 Corcoran Street, N. W., Washington, D. C. We shall follow the example of our sister organization, the Alachua County Welfare Rights Union, which, by direct action, lobbying, and agitation, have won a Commodity Food Distribution Program, and a Out-Patient Health Clinic for the poor and indigent.

Our purpose is to demand nothing except adequate income, dignity, justice, and democracy. We shall associate all persons who are welfare recipients and poor for the betterment of their economic and social welfare.

Although, we are a non-profit agency, we plan to use our constitutional rights to the fullest extent in direct action, agitation and petitioning.

Like a Union, (1) we seek the right to form a welfare recipients organization without intimidation, (2) we seek to be recognized by public agencies and private agencies as representatives Welfare Recipients and poor people, and (3) that we seek negotiation and agreements from public and private agencies for their acceptance of our demands and requests.

We have joined with our other sister organizations in

the State such as the Acachua County Welfare Rights Union, which has the same purposes, and constituency, to form a Florida Welfare Rights Organization. Its Action Committee is planning a state-wide march and memorial service in Tallahassee, Florida, to serve the principles for which Dr. Martin Luther King, Jr. died. This action shall occur on April 8, 1969, at this time, we shall submit a Legislative Proposal to the Florida Legislature.

There are 200 lobbyists representing all groups except poor people. We shall have our own lobbyists.

We guarantee our own leadership Development, self-direction and decision making. We shall make our own policies. However, we welcome advice. We invite assistance.

We desire that both on a State level and here in Dade County, an organization be formed of concerned friends. It would be called the Friends of Welfare Rights or Supporters of Welfare Rights, or, such as in Cleveland, Ohio, it could be called the Coalition for Welfare.

No matter what such a group is called, it would have the purpose of a friend. It should offer advise, which would benefit the Dade Welfare Rights Movement, for its plans for a march in Miami, Florida on Good Friday. It should help raise the funds, such as on Welfare Sundays in the churches, which would defray the expenses of the Welfare Mothers for participating in the March in Tallahassee. By helping pay

for travel expense, food, medical expenses, and baby-sitting expenses.

Such a Committee should have representatives for socially concerned groups, churches, and others. It should have a Treasurer to receive funds and an Executive Committee to appraise the expenditure for said funds.

We are on Welfare. We are poor. But we are not ashamed. We are proud and stand tall in human dignity. We shall inherit the world. We are picking up our beds to demand that our basic needs are satisfied. We shall not allow Florida to continue the present Welfare System which is designed purportedly to save money rather than people while in practice tragically, saves neither.

PRESIDENT
Mrs. Gladys Taylor

VICE PRESIDENT
Mrs. Lovene Tombin

SECRETARY
Mrs. Velma Baker

TREASURER
Mrs. Mary Lee Pope

ADVISERS
Mr. John Due, Esq.
Legal Services Program, Inc.

FLORIDA WELFARE RIGHTS ORGANIZATION
FEBRUARY 15, 16, 1969
TAMPA, FLORIDA
OEO NEIGHBORHOOD CENTER
TAMPA HEIGHTS METHODIST CHURCH

The meeting was called to order by Mrs. Homilee Hunter, acting chairman for the Florida Welfare Rights Organization. Rev. Parker, of the Christ United Methodist Church, Tampa, Florida, gave the opening prayer. Mrs. Hunter asked John Due, Attorney, Legal Services Program, Inc., adviser to the Florida Welfare Rights Organization, to preside. Mr. Due indicated that Mrs. Hunter decided not to conduct an official FWRO meeting because of the low attendance of representatives of welfare recipients organizations from the state. He said that everyone realized that FWRO is still in the phase of organizing, and that finances are still a dire problems for sending and paying the cost for representatives to attend. There wer no representatives from the WRO's in Gainesville, Belglade, Ft. Myers and Tallahassee. This was due to other than lack of expenses, it was because of the tornados which occured early this morning, resulting in storms. Mr. Due said there were representatives present from other groups other than FWRO in responce to notices. These notices were sent by Mrs. Hunter to representatives of Welfare Rights Organization, supporters, friends and other concerned persons. He then asked every person to give his name and state the groups he represented. Persons present during the February 15, and 16, 1969 are as follows:

Rev. Gordon Craig	Tampa Heights Methodist Church
Rev. Benjamin Barry	Tampa Inner-City Parish
Rev. Andy Parker	Christ United Methodist
Silvio Lufriu	Aide to Florida Legislature
Bernard La Fayette, Sr.	Interested Person
C. L. Butler	Welfare recipient
Ozella Butler	Welfare recipient
Rev. J. B. F. Williams	Tampa Inner-City Parish
Delia P. Sanchez	National Association of Social Workers
Carl Neill	State Department Welfare Representative
Robert Buckley	Student of Legislature Concern
Albert R. Jackson	Student of Legislature Concern
Rev. Bernard La Fayette, Jr.	Southern Christian Leadership Conference, Atlanta, Georgia
Elvira Hayward	St. Peterburg, Florida
C. V. Patterson	Tampa, Florida
Rev. Gordon Christenson	Tampa, Florida
Elmarie Clark	Miami, Florida

Oscelo Chatman, Jr.	RWDSU, Florida Council AFL-CIO
James Jackson	EOPI, Miami, Florida
Beuhalh Mc Collum	AFDC Congress, Miami, Florida
Phillip Johnson	EOPI, Miami, Florida
Samuel Weiss	Pinellas Opportunity Council
Robert R. Brower	Pinallas County Senior Citizen Council
Rev. Dr. W. Bolitho	St. Petersburg, Florida
Mrs. R. R. Brauer	St. Petersburg, Florida
James A. Hammond	Tampa, Florida
Homilee Hunter	Acting, State Chairman, Welfare Fights Movement of Florida
Evelyn Blackman	Chairman, Liberty City Community Council
Gladys Taylor	Chairman, Dade County Welfare Rights Movement
Mary Pope	Florida Welfare Rights Organization
John Due, Esq.	Legal Services Program, Inc. Miami, Flor
Marcia Draluck	Legal Services Program, Inc. Miami, Flor

Mr. Due, after introducing himself, stated the history of the FWRO.

Mr. Due said that he was a former National Officer and attorney for CORE in Florida, 1965. He said, that in 1966, Mr. George Wiley, former Associate Director of CORE, had resigned his position and became Director to a Welfare Rights Action Center, in Washington, D. C., to serve organizations of Welfare recipients which were developing all over the nation.

Mr. Due said, that by early 1967, these local Welfare Organization had a National Convention, and formed the National Welfare Rights Organization. He said that the purpose of the NWRO is to assist in Coordination of National policy for lobbying, giving information to local groups, and to assist in organizing local groups.

Mr. Due said that the NWRO does not control local groups and insists on local initiative. He said that NWRO also insists that local organizations be of and by poor people, with decision and action by poor people. Local WRO's must direct themselves and not be directed by non-poor persons. They can have advice and assistance from Professionals or concerned persons. Persons who are not poor can constitute not more than 10% of a local membership.

As to a question from the floor regarding "What is Poor" Mrs. Hunter said that the Federal guidelines of poverty level are accepted, or the general guideline of $4,400 per annum for a family of four.

In the summer, of 1967 the Alachua Welfare Rights Union was organized, in Gainesville, Florida, Mrs. Carrol Thomas, a white mother presently in jail and Mrs. Savannah Williams

are the present representatives. This organization became an affiliate to the National Welfare Rights Organization. The Alachua Welfare Rights Union won from the County an Out-Patient Health Clinic for indigents and a commodity food program.

Mr. Due, said that meanwhile in 1967, Mr. Phil Johnson, on behalf of EOPI, the Dade County OEO CAP program had organized at 9 neighborhood centers Aid to Dependent Children welfare clubs. By August, 1967 these clubs met in a general convention and formed a Congress, a county-wide organization of ADC clubs. The purpose was to become a non-profit corporation to execute development and educational programs, and represent ADC mothers on a county-wide basis and to cause social change in the welfare system. Mr. Due then asked Mr. Johnson to tell the group what occured. Mr. Johnson described the postive reception by County officals, particulary the Dade County Delegation of Florida Legislature to the mothers proposal.

Mr. Due continuing, stated that while attending the Southern Christian Leadership Conference Convention in 1967, he particated in the adoption of SCLC's new role, as described in Dr. Martin Luther King, Jr.'s book "Where do We Go From Here", this program resulted in Economic Development Action, in whose services Dr. King died on behalf of poor people,the black garbage men in Memphis, Tennessee. Also, the Poor People's March in Washington, D. C. where the NWRO joint forces with SCLC was planned.

Mr. Due then indicated that Legal Services Program, Inc. , Miami, Florida hired him in November, 1968 to give group counseling advice and assistance to poor people organization in Dade County. At an ADC congress meeting in November, the congress decided that they would form as a Development Corporation which would establish producer and consumer cooperatives. It was also decided that in order to avoid tax-exempt problems for political and action programs, there should be established a Welfare Rights Organization to include all poor people as well as ADC Mothers which would engage in confrontation and political activity. At another meeting the Dade County Welfare Rights Movement was organized.

Mrs. Gladys Taylor was elected temporary President, along with other executive board members. In Homestead, Florida, later in December, representatives from all 9 areas in Dade County were chosen as members of the Dade County Welfare Movement's Coordinative Committee. A call then went out for a state-wide meeting of all Welfare Rights Organization in the state of Florida. A meeting was held in Miami, Florida

January 18, 1969. Three counties were represented; which were Glades, Palm Beach County and Dade County. Mrs. Hunter was accepted at that time to be the representative from the State of Florida, as a member of the National Coordinating Committee of the National Welfare Rights Organization from the Liberty City Community Council, Welfare Mothers Delegation. She had called and presided at this meeting. Mrs. Hunter was accepted as temporary chairman along with other officers until another meeting could be held where more representatives from other local WRO's could particate. Mrs. Hunter, said that at the meeting, a structure was established, which is described as the Florida Welfare Rights Organization, with policy and action to be established and conducted by an Action Committee. This committee is to consist of representatives choses by local Welfare Rights Organizations.

Mr. Due continuing said that at the meeting a plan for a march on Tallahassee similar to the Poor People's March in Washington, D. C., was decided upon. The march will be in memory of Dr. Martin Luther King, Jr. and to present proposals to the Florida Legislative. It was also decided to have a meeting in Tampa, to enable Welfare recipients to develop a legislative Package and to develop plans for the march. Mr. Due said that it was also decided that the Southern Christian Leadership Conference, be solicited a plan to help the march and direct action program and to include all other groups and concerned persons to assist in planning and supporting the march.

Mr. Due then introduced Rev. Bernard La Fayette, Jr. the main speaker for the saturday session and program Director for SCLC, who gave a most inspiring talk on the problems of the poor and the importance of organizing to counteract these problems. There followed a general discussion by those present as to problems confronting welfare recipients. Mr. Phil Johnson was then asked to state in a form the suggestions raised by the discussion for proposals to the legislative package. They are as follows:

1. Simplification of eligibility determination and change of the regulation that halt benefits when there is an unemployed man in the recipient's home.

2. Baby sitting or special allowances for welfare mothers to attend school or college for them to learn skills that may free them from poverty.

3. College tuition and allowances to supplement all needs of any welfare recipient who wishes and can benefit from the training.

4. Allowances for non-prescription drugs, furniture, clothing and basic needs up to 100 percent.

5. Unless the state provides 100% of the basic needs, no recipient should be penalized for supplementing income up to 100% of need according to the current economic standards for the average American family.

6. Welfare recipients should be allowed to have telephones as a necessity.

7. Money should be provided for any recipients to pay for nursery or baby sitters whether she is employed part-time or whether she is attending a training session.

8. Special supplementary grant should be given in August for school clothing, for heat, blankets and clothing for the winter months and special grants for gifts for dependent children during Christmas. These special grants should be based on the number in the household rather than determining a minimum level.

9. Special grants for furniture should be given each month which will allow dependents to live in dignity.

10. The entire structure of the Welfare Department should be reorganized in order to allow social workers to have more freedom to do more social work and that a special department should handle grants.

11. That the standard qualifications for social workers be changed which would allow former Vista and Peace Corps workers. To work as social workers that credit for experience be equal to the Department of Welfare must recruit those persons who understand welfare problems and who would treat welfare recipients and applicants with respect and dignity.

12. To raise the salaries of social workers in order to encourage good social workers to remain in the system, and this would decrease the high turn over rate in the department.

13. That his atate adopt the Food Stamp Program along with the Supplus Commodity Program with full appropriations.

14. Provisions to enforce housing codes without penalty of evictions for complaining tenants.

Mr. Due, said that, with approval from Mrs. Hunter, these proposals, in addition to those of the Gainsville Women for Equal Rights Welfare Committee, Alachua County Welfare Rights Union, and other groups which have proposals, be prepared in a package and sent to each of the representatives of the Action Committee of the FWRO for approval. It was so agreed by the mothers. Rev. Bernard Lafayette, Jr. suggested that the mothers visit churches in Tampa to ask for support. They agreed to go the next morning. The meeting was recessed until Sunday to reconvene at 2 p.m.

The meeting of representatives of the FWRO and concerned persons recovened Sunday afternoon at 3 p.m. The meeting opened with a round of freedom and welfare songs led by Mrs. Gladys Taylor, President of the Dade County Welfare Rights Movement and Secretary to the Dade County SCLC. Mr. Due presided at the side of Mrs. Hunter. Persons not present at the previous meeting identified themselves.

Mr. Due explained that representatives of poverty groups who were not present had given support to the decisions to be made at this meeting and that the welfare mothers who were present were authorized to make the necessary decisions affecting the WRO. Any other decisions were made by telephone conference and at a third meeting of the FWRO to be held in Jacksonville before the march in Tallahassee.

Mr. Phil Johnson then pointed out that there was much work to be done on a statewide basis and such limited time to both organize welfare rights organizations where none exist and organize support. He said there is a need for a statewide coordinator who can move around over the state. Mrs. Taylor asked Mr. Due to be the coordinator. Due said that his role should remain that of counselor to the organization and give representation as an attorney.

Rev. Lafayette said that the Southern Christian Leadership Conference in response to the FWRO request for assistance, would have to decide the extent of SCLC's participation during a staff meeting, but that he is authorized to commit SCLC to provide a full-time organizer from Florida who at the present time is Director of the Poor People's Lobby in Washington, D.C. Rev. Lafayette said that this person shall be available about the first of March. He also said that FWRO should develop a

a budget for the march and he committed SCLC to pay for one budget item.

Mr. Due promised to seek Joseph Waller, of St. Petersburg, to work and to travel with the SCLC Organizer.

Rev. Lafayette said that his concern is also about the structure for planning the march-in. He indicated that small special committees should be appointed to develop the logistics of the march in Tallahassee, with the assistance of a special full-time office for the coordination, which can be in a church, with an assistant coordinator in charge. This special committee will report to the group. After discussion of this problem the welfare mothers agreed that Mrs. Gregg Phifer, Rev. C. K. Stewart, Jr. as the leaders and organizers of the Poor People's Prayer Jigil on the Capitol steps in 1969 be solicited to accept appointment as this special committee and to make a special effort to recruit poor persons to participate in this special small committee and especially convey to the Tallahassee people this special need.

Mr. Due raised the question as to the main speaker such as Mrs. Coretta King. A letter by her to Mrs. Taylor indicated she would not be able to participate at the indicated time which was tentatively planned to be early in April.

Rev. Craig suggested A. Phillip Randolph, a Black Vice-President of the AFL-CIO, as a main speaker because he is from Florida. Both John Due and O. Chatman suggested Mr. Cleveland Roberson, the president of the American Negro Labor Council. Rev. Lafayette suggested Mrs. Dorothy Heidt, and Mrs. Abbernathy. After a general discussion it was accepted by the mothers that Rev. Lafayette would seek out the prominent figuges to participate in the march.

Mr. James Jackson then raised the question as to finance, he stated that the recipients had no money to pay for baby sitting and other expenses. Mr. Due replied that it is imperative that a statewide support organization be formed which can give advice, technical services, and can help raise funds. Mrs. Hunter said that the NWRO has already established officia; friends of National Welfare Rights Organization with suggested membership dues. It was agreed at the meeting however that the most urgent need was to organize local support organizations in each community whether or not these organizations are so tightly structured as set up by the National Welfare Rights Organization, because of the march-in. These

support committees should have representatives from the churches, liberal organizations, labor, and concerned persons. Mr. Due suggested that each support group should elect its own officers, help raise funds for WRO Programs and the march-in. Mr. Chatman, of the Florida Council of the RWDSU pledged to help organize such a support committee, both in the state and in Dade County. Mr. Due said that it is well for all the concerned persons to form these support organizations.

Mr. Due emphasised the fact that local organizations must have a membership of at least twenty five before being affiliated with the National Welfare Rights Organiation. Mr. Simon Wise and Elvira Haywood would contact Mrs. Eleanor Adams and work toward forming a support committee. Mr. Due then informed the participants that the SCLC has a tax exempt department to carry on education programs to train people. He said the Director Mrs. Dorothy Cotton invited militant persons to come to Dorchester, Georgia. This training program is to last February 24th to 28th, 1969, with all expenses paid. Participants will be given leadership training and will be educated as to their opportunities under poverty programs. After being trained, the participants will be given a salary of about $40.00 per month to conduct training in their area.

The date of the march was then discussed. It was decided that the march would take place the first day of business for the legislatures, which is April 8th. It was also decided to have a fund raising program to promote the participation of the community in Tallahassee in the march and to raise money for the FWRO. It was also decided by the mothers, that the next state meeting be held on the third Friday in March, (21) in Jacksonville for the following purposes:

1. To be recognized by the State Department of Welfare in negotiation for the Administrative Proposals.

2 To carry out a non violent demonstration in Jacksonville, Florida. To initiate the organization of a WRO and support committee in Jacksonville, as the second largest city in Florida and head quarters of the State Department of Welfare.

3. To receive reports of committees on progress of march arrangements.

The meeting was adjourned.

Imarie Clark

M E M O

Enclosed herein are two copies of the suggested legislative package proposal. One copy can be retain. Please returne the other copy with suggested amendments or inclusions as soon as possible. We must have our completed legislative proposals ready for disbursement by March 1, 1969 to be presented to the proper legislative committee by March 4, 1969.

TENTATIVE PROPOSALS TO THE FLORIDA LEGISLATURE, COMMITTEE, AND TO THE DEPARTMENT OF STATE WELFARE

By the Florida Welfare Rights Organization, Mrs. Homilee Hunter, Suite 202, 395 N. W. 1st Street, Miami, Florida 33128, Acting Chairman. Mrs. Savannah Williams, Chairman of Legislative and Negotiation Committee, 318 S. W. Terrace Streeet, Gainesville, Florida, 32601.

(A) Welfare Organization: General Problems.

The Florida Welfare Rights Organization supports the proposal of the Department of Welfare to reorganize. However we include other proposals for reorganization to assure maximum service & fair treatment by the agency to the recipient.

1. We support the bill introduced by the Department of Welfare to reorganize its structure.
2. We support the bill introduced by the Department for additional appropriations. We request sufficent appropriations in additional to those the Department of Welfare requested, which would be sufficent and reasonable to carry out the inactment of the proposals herein.
3. We request social workers salaries be increased. We are aware of the tremendous turnover of employees in the Florida Department of Welfare. Many dedicated workers

are leaving the agency for better paying jobs and working condition.

4. The agency should also employ socially concerned experienced and committed persons who may not meet all of the currently requirement. Many former Peace Corps volunteers and Vista workers had been denied the opportunity to serve the department because of this factor. Yet they could bring to the department a commitment and understanding of the recipients problems. Which heretofore has been grossly lacking.

5. Employment of social workers aides from the recipient or poverty group to assist professional social workers. Culture and class distintions have rendered communications and cooperation difficult regarding rehabilitation and services. With involvement of aides it is believed that this gap can be bridged.

6. Provisions to guarantee the employment of social workers at each district whose background is similar to the persons to be served. This will assure ease in relating to recipients and guarantee equal employment to all groups, White, Latin American and Negro.

7. We request that Florida adopt the declaration system. The Declaration Policy will require all welfare departments to accept a simple statement from the person applying

for aid instead of complicated applications and investigation procedures. This will make it easier for eligible people to receive assistance.

8. Removal of residence requirements. Florida should follow the example of California and Washington and to anticipate the Federal decision which will outlaw resident requirements.

9. Simplification of applications and requirement procedure for welfare applicant. Also distribution of booklet and manual with sufficent information to allow recipients to be aware of their rights.

10. The department of welfare should be divided into two sections one section handling only welfare grants and assistance, the other handling social work.

11. To provide into the State Law the rights of Welfare recipients and applicant to organize into welfare rights organizations and to be recognized by the department of welfare as having the right to negotiate and to discuss regulations, rules and policies. Also that welfare recipients and welfare organizations have the right to lodge complaints against the Department of Welfare. It is a clear constitutional right that welfare recipients, as well as other citizens or residents of the U. S. may associate, because of the social and economic conditions welfare recipients are in

an unequal position to individually represent themselves before the State Department of Welfare.

12. To provide for equal representation on the state board, advisory board and councils of welfare by welfare recipients. It should be clear that nobody understand the problems on welfare better than welfare recipients themselves. Welfare recipients demand the right to assume the necessity of helping themselves rather than being placed in services rendered to them by others.

13. To provide other services be aligned. Now is the time to aligned the welfare districts with others in areas such as mental health, vocational rehabilitation, day care, and other social services.

14. We request prohibition of reductions in grant within a budget year. In the past year welfare recipients were punished by a reduction in grant by the State Department of Welfare because of funds not available in the budget. This was in the Christmas season a time of need for welfare recipients. It would seem that this should call for a special meeting of the Legislature just as they would for any other emergency.

15. To provide for standardizing grants through out the state regardless of county discretion. This would assure all recipients equal treatment according to need. This would include

medicard, food stamps, Family Health training, surplus food commodity, vocational rehabilitation in educational and retraining. Also this should be provided by a state minimum level. Poor people and recipients should not bear the burden of the failure of counties to provide adequate service. This is the same reason why the state of Florida is establishing standardized minimum education requirements for the children in all counties.

16. We request the establishment of a study commission for consideration of proposals for elimation of welfare, such as a negative income or guarenteed annual income. The result of such a study commission could best inform the Florida Delegation to Congress as to the desire and need for such legislation from Florida.

17. We request provisions for a prior hearing policy. A prior hearing policy by the State Department of Welfare would require the welfare department to notify recipients and make it much harder for the welfare department to cut recipients off unfairly, fillegally, or "by mistake".

18. We request provisions requiring hearing officers to make recommendation at hearings and not act only as a transcriber.

19. We request an attorney be provided free of charge to represent recipient at any fair hearing or appeal.

20. We request an extension of the Public Defenders system to misdemeanors and municipal court offenses. Poor people are unable to exercise the benefits of the constitution demanding a hearing and self representation as compared to other classes.

21. A program of Legal Services to supplement or initiate programs where none exist or where certain minimum stands are not met. Poor people and welfare recipients by virtue of them unequal position do not have the right to protest their personal properties as well as other classes. Because of this, welfare recipients and poor people are exploited. We request the establishment of a code of conduct for state department in all districts. Said code should include provisions to provide for dismissal of any employee engaging in threatening, coercine, madating, insulting, invasion of privacy, trespassing and unreasonable search procedures against applicants and welfare recipients. Also, to provide a opportunity for complaints; a public hearing with counsel provided if necessary, and notice of any employees who are found guilty. Most welfare recipients are quite intimidated persuing their rights as citizens because they are welfare recipients, due to the action of many employees of the Department of Welfare.

It should be clear that by being a welfare recipient or applicant one is not revoking as right as a citizen of the State of Florida.

22. We request the elimination of the Welfare death claims recovery law. The enactment of this cause great discrimination against welfare recipients regarded as a right and not as a loan. This said law establish a dangerous precedent by the state. It does not extend to all other persons receiving services, such as education is discriminating only against the poor.

23. We request rent allowances reasonable for the size of the family and not based on an arbitrary macimum. Welfare recipients should not carry the burden of rent and housing cost, local government should make low cost housing available to recipients.

24. To provide welfare assistance to two adult families who qualify by combined income.

25. We request the removal of maximum grants for AFDC such as those that apply to old age recipients, aid to the blind, and aid to the disabled.

26. We request payment and assistance to 100% of the basic needs.

27. We request that the automobile of a recipient not included as a resource unless that automobile is less than 4 years old, paid for, and is used only for private use.

28. Regulation of labor contracting business with provisions setting standards to be the same

as is provided in the Labor Contractor Registration Act, and with provisions set forth making it a misdeamenors breach of promise with regard to pay scales and regulation of fees.

29. Extension of enemployment compensation act to include agricultural workers or others employees of smaller units presently not covered. Increase benefits to reflect the cost of living and basic needs. Refusing to list employment which fails to promise to pay at federal minimum wage levels.

30. Provisions allowing the state counties or groups of counties and minicipalities to have and use their bonding power to establish industrial parks, to fund industrial construction, and to invest in capital goods. Other southern states such as Mississippi, have been able to increase tremendously there industrial power by this means.

31. Full participation, adoption and appropriations for both free stamp and surplus food programs and requiring each county to set up such a program within said county.

32. To provide in the code of conduct for employees of the State Department of Welfare termination of any enforcement of any "man in the house rule". Welfare Department employees continue to invade the privacy and human dignity of welfare applicants

and recipients by investigation as to personal lives of welfare recipients and applicants. We demand that in essense, relating to AFDC, the call is for the assistance to children who cannot be the blame or cannot be the cause of their condition.

33. We request the extension of age limits to twenty-one in AFDC program for students regularly attending high school, vocational or technical training school, or who are preparing for gainful employment.

34. We request expanded services and staff in the adoption placement program.

35. We request provisions for the protection of neglected children, including funds for foster home care and sufficent staff to provide the necessary services. It is essential that the department of child welfare services be available on a statewide basis.

36. We request sufficient funds to meet the basic needs of children deprived of parental support and to improve counseling services for their parents.

37. We request the implementation of emergency placement of children in foster home care.

38. We request Florida's participation in the temporary aid to dependent children for families where the parent is temporarily

unemployed.

39. We request statewide day care centers which are publicly funded, to be controlled and regulated by the state board of education, in conjunction with vocational schools and other schools, and the state department of Welfare, with provisions that certain minimum standards of education programming, health, and physical environment be established in all counties. Welfare recipients are discouraged from working when they are aware there is inadequate day care facilities or inadequate babysitting provisions. Also it is proven, that child- of welfare recipients, because of the condition of their parents are unable to obtain the full potential in education. Such children should have the same opportunity as children of non-welfare recipients.

Poor people or welfare recipients do not enjoy being on welfare, just as taxpayers do not enjoy paying the cost of welfare services. They desire to be trained and be employed but not at the cost of improper car of their children, while they work and not at the cost of false expectation and promises.

40. College tuition and full support should be provided to supply all needs of any welfare recipient who is engaged in training or who is attending school or college.

41. We request provision which guarantee full training and vocational rehabilitation for welfare recipients. These programs should be adjusted to the need and availability of jobs, and not raise false expectation and hopes.

EMPLOYMENT

The reason almost 40% of the citizens of the State of Florida are under the poverty line is because of abuses of the employment practices, in this state. For this reason we offer the following provisions as proposals.

1. We request the enactment of a state minimum wage law consisten with the Federal minimum wage, at $1.30 per hour to extend to all areas not presently covered by the Federal Minimum Wage Law, such as in public and private employment.

2. We request the establishement of a State Fair Employment Practices Law, with provisions against age, sex, and racial discrimination, with strong investigative and enforcement powers.

3. We request a state collective bargaining law, to grant the right to employees to bargin collectively with public and private employers, and in those areas which are not presently covered by federal legislative.

4. Extensionoof Workmen's Compensation Law, to be extended to employees not presently covered; namely agriculture workers, and workers small units. Estension of the period of time for which injured persons can receive grants or benefits.

CONSUMER PROTECTION

To allow consumer to rescind sale of goods or services where the sale is entered at a place other than the address of the seller. The transferee of seller does not consume warranty

of condition of goods or services. If bill was introduced in Congress last fall seller to the first part of the provisions in order to protect the consumer against high powered salesman such as seller of wigs and books, which enable easy judgement to be obtained for one-payment of debt but where the buyer is not protected. The second part of the provisions is to protect against practices of buyers to transfer counterparts to protect against sellers who sell their paper to loan companies who then do not take any interest or control as to the condition of a product or services sold to the buyer.

Requiring utility companies not to demand deposits of welfare recipients and poor people. To require the utility companies to bear the burden of inaccurate meter reading an estimation of bills. To provide that there be no termination of services for non-payment of bills without the opportunity given to the consumer in installments spread over two years. Welfare recipients require utility service, a public service, yet at many times, are least able to pay as compared to other consumer. These are protection for the consumer who is least able to protect themselves and who are most subject to make mistakes.

We request provisions regulating repossession by the seller or his transferee. A regulations of shares sales, where repossession and share sales are due to non-payment of debt. We request a provision providing that prior to repossession and prior to a share of sales, juridsiction of the court is perfected and that burden of proof shall be on the seller to prove the following:

(a) No misrepresentation or fraud or unconstitutional agreements:

(b) that the buyer is presently employed and able to pay the debt:

(c) the seller has given reasonable new opportunity to the buy buyer to renegotiate payment of debt according to his ability to pay.

The consumer is at an unequal status relating to seller to protect his own rights particular is he is poor as welfare recipients are. Regulation of credit bureaus and loan companies, to allow recipient to obtain credit, particularly at department stores, to require agencies to render services to applicants of credit so that they can obtain adequate credit ratings, and limitations to two years negative information as to credit rating, a persons credit rating be available to him, and to establish as a cause of action false credit information, and to permit courts of proper jurisdiction to render cease and desist orders, against credit bureaus and informants of negative false credit information, with cost to be assessed against the defendants including reasonable attorneys fees.

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MEMORANDUM FOR THE NATIONAL
WELFARE RIGHTS ORGANIZATION

"Federal Food Programs"

(Food Stamps, Commodity Distribution,
and School Lunch Programs)

By: Ronald Pollack
Center on Social Welfare
Policy and Law
401 West 117th Street
New York, New York 10027
(212) 280-4112

Federal Food Programs

The programs, directly related to food benefits, which are of greatest importance to poor people are: (1) the food stamp; (2) the commodity distribution; and (3) the school lunch programs. Each program can provide very valuable food benefits, thereby significantly adding to a welfare recipient's resources. First, I will provide a brief description of how these programs operate. Then, I will indicate how the Department of Agriculture and state and local officials have maladministered the programs, thereby suggesting the issues around which people can organize and where we can provide supportive legal efforts.

I. How the Programs Operate.

Under normal circumstances, a county (or city) can implement either a commodity distribution or a food stamp program, not both. In many communities, neither program is in operation and in still other communities, there is good reason (and legal validity) for operating both at the same time; these two issues will be discussed in Part II. Basically, however, the food stamp and commodity distribution programs should be viewed as complementary programs, each working toward the same goal but through different means.

A. The Commodity Distribution Program.

The Commodity Distribution Program is basically a program of straight handouts. In order to be eligible for the program, one must qualify according to state standards. These standards are contained in state-wide plans of operation which must be approved by the Department of Agriculture. In almost every instance, the only real requirement for eligibility is being poor; in other words, the "need" qualification - one of many requirements for receiving public assistance - is usually the sole requirement for eligibility in the commodity distribution program. In fact, state standards that are used for determining whether there is such "need" are usually exactly the same as in public assistance.

Therefore, anyone on welfare (whether it is AFDC, APTD, OAA, or AB) automatically qualifies for commodities if a commodity distribution program has been implemented in that community. In addition, those people who, on state welfare standards, were considered in "need," but who did not qualify for welfare because they did not fulfill all the other requirements for categorical assistance, should also be eligible for commodities. (E.g. poor family with many children but both the father and the mother live with and provide for their children. The family is not eligible for AFDC but it is for the commodities program.)

Some of the commodities that are available for distribution include: enriched corn grits, enriched cornmeal, enriched flour,

canned meat, non-fat dry milk, peanut butter, split peas, instant mash potatoes, raisins, white rice, vegetable shortening (or lard), and rolled oats. In an attempt to stifle growing criticism about the "starchy" nature of these foods, the Department has recently added a few poultry items, fruit juices, and vegetables to the program. The Department, and the regional offices, recommend to the states how much and which types of food should be distributed. The state, however, usually through the State Welfare Department (but sometimes through the State Education Department) makes the final choice as to which commodities will be handed out, also making the choice as to the quantity to be distributed. Its choice of commodities is only limited by the Department's list of types and amounts of food available.

Prior to the Poor People's Campaign, the amount of food distributed per person per month under the Commodities program was a few pennies over five dollars ($5). Due to some of the pressures exerted upon the Department, monthly packages now have a retail value of approximately eight dollars ($8) per person.

In the Department's eyes, the program's main purpose is to provide price supports for farmers; the Department considers the welfare purposes of the program to be only incidental to that task. It is for that reason that only surplus commodities are being distributed to poor people and that nutritious foods, not in surplus, are being withheld. It is for that reason that the

Department shows such little concern over the fact that 527 million dollars were unused last fiscal year (all available for more and better commodities) and that 396 million dollars is projected to be unused at the end of this fiscal year.

All of the benefits provided by the commodities program are paid for by the federal government. The only expenses incurred on a state or local level are the ones required for administering the program (i.e., paying the clerk who certifies that a family is eligible; storing the commodities in a local warehouse; and paying the people who directly give the food to certified poor people). If a locality claims that it cannot afford to pay even these very minimal costs - this being the argument always advanced by the communities that have neither a commodities nor a food stamp program - the federal government has the authority to subsidize these costs. The Department of Agriculture can use its own money for administering the commodity distribution program in different locales; further, the OEO Emergency Food Bill provides that Community Action Agencies or other groups - such as welfare rights groups - can administer the program. If such groups are certified to run the program, the administrative costs would be paid out of appropriations for the Emergency Food Bill.

Money for providing the food benefits of the commodities program come from two sources: Customs taxes and annual appropriations. The first source, often called "Section 32 funds" by lawyers and politicians, provides that every year, automatically, 30% of the previous year's customs taxes is available for use in the Commodity Distribution Program. Congress does not have to appropriate a single penny, or even consider the matter, for this provision to be effective. It is from this source of money that the Department constantly returns hundreds of millions of dollars back to the Treasury. No where in the legislation is there a hint that the moneys provided are limited to the purchase of surplus commodities; these funds can be used to buy meat, vegetables, milk, and fruit - only the Department chooses not to do so. The second source requires annual appropriations from Congress and is limited to providing food commodities that are in surplus.

Dates of distribution, places for distribution, and places of certification (and re-certification) are the types of decisions made on the local level. From my observations in different communities, the local authorities are always rigid in operation, sacrificing important benefits for poor people for the purpose of maintaining expedient and efficient administration. As an example, most localities designate only one specific day in a month for picking up the commodities; if a person is sick on that

day, or for some reason cannot get to the point of distribution, that family is entirely excluded from the benefits of the program that month. (Obviously, there are localities with more liberal administrators who might distribute goods twice a month and give commodities to people who have missed their day.) Other examples of local expediency might include the setting up of distribution points at localities uncomfortable for poor people, such as areas distant from poor communities which require significant transportation expenses in order to pick up the goods.

B. The Food Stamp Program

This program operates quite differently than the commodity distribution program. In theory, this program is better than the commodities program and should provide far greater benefits to eligible households. The basic purpose behind this program is to increase the food purchasing power of poor families.

Eligibility standards for this program are usually identical, or at least substantially similar, to those for the commodities program. Here again, the eligibility standards are set by the state, usually conforming to the "need" qualifications of public assistance. Anyone on welfare is usually automatically eligible for the program's benefits. Others, who have not satisfied the eligibility requirements for public assistance but have met the "need" qualifications, are also eligible for

food stamps. State plans of operation, which include the eligibility standards, are submitted by the state (welfare department) for approval to the Department of Agriculture.

The prices for the stamps, the "bonus" allotment, and the total allotment for individual households are set up by the Department of Agriculture. Only two tables have been set up for the entire nation. These tables are rigidly followed by every state, never allowing flexibility (as in situations where a person just does not have enough money to meet the requested purchase price). One table, set up for the Southeast region, is rigidly applied in ten states: Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia. Seven states - Arizona, Delaware, Florida, Idaho, Nevada, New Hampshire, and Oklahoma - have no food stamp program at all.

For all of the other 33 states, plus the District of Columbia, another table has been set up which is, also, rigidly applied. (Attached to this memo are the price and allotment schedules for both groups of states: the first from the Alabama welfare regulations and the second from the California welfare regulations. As indicated above, the Alabama table is identical to the other nine Southeastern states while the California table is identical to the ones in 32 other states and the District of Columbia.)

An explanation of how the program works can be done by way of illustration. Turn to the California table and look at the part which indicates the payment requirements and benefits for a four-member household earning $150 a month. (I have darkened with pen the relevant figures for such a household.) Such a family must pay $56 in order to get $86 worth in stamps. Should the family be able to put up the purchase requirement ($56), the stamp allotment will provide that family with a "bonus", or benefit, of $30 in additional food purchasing power. The $86 in stamps can be used solely for the purchase of domestic food goods, with the exception of liquor and tobacco. The coupons can only be spent at food stores that have been certified by the Department of Agriculture. (Many local grocery and food stores are certified for such purposes, thereby usually providing a variety of places where a person can use the stamps.)

If a family is ill, temporarily unemployed, or for some other reason cannot put up the full purchase price, it is entirely excluded from the benefits of the program. Going back to our four-member household above: if the household cannot afford the $56, it cannot ask for a reduction in the price. It can't even bargain for a lower purchase price by offering to give up part of the $30 "bonus" benefits. The tables are most rigid; all or none; strict compliance or no benefits is the policy followed throughout the country.

In the majority of places running the food stamp program, monthly purchase payment requirements must be made on a particular day, the entire payment made in one lump sum. More liberal jurisdictions permit a household to pay half the amount at the beginning of the month and the other half in the middle of the month. The details of when and where payments are to be made is determined by state and local officials, usually incorporated in the state's plan of operations. In some areas, the stamps can only be purchased at the welfare department; in other places, banks and special food stamp outlets are sometimes used as well.

The benefits of the program - the bonus allotments - are subsidized entirely by the federal government. Unlike public assistance, but similar to the commodities program, there are no state or local funds which must be put up through any matching formula. The only expenses incurred on the state or local level are, once again, administrative costs (such as salaries for the local clerks or officers who certify eligibility or who take the money payments, issuing stamps therefor). The Department of Agriculture must go to the Congress every year for its appropriations, there being no automatic funding provision like the "Section 32" funds for the commodities program. It is especially in this area that Congress has crippled the food stamp program, since this program needs many more funds than Congress is willing to provide if it is to function in a useful manner for poor people.

C. The School Lunch Program

There are not many things that must be stated about the operation of this program. Basically, as the name suggests, it is a program intended to feed school children, rich and poor alike. The significance of it is that the School Lunch Act of 1946 has provisions which are supposed to assure that poor children will be able to get such a school lunch, even if the children's parents or guardians cannot afford to pay for it.

Under the School Lunch Act, school districts throughout the country have the opportunity to get federal assistance, through a match-funding formula, in order to help a district acquire food for all children. The basic formula, with numerous variances, is that the federal government (through the Department of Agriculture) will put up one dollar for every three dollars put up on the state-local level. (In most states, state and local appropriations no where come near the 3 to 1 matching formula; the Department, contrary to my interpretation of the law, has allowed the states to say that the moneys accumulated directly from the school children themselves - when they pay their daily approximately 25 to 35¢ lunch charge - can be included in the three dollar state-local matching requirement.)

The most important fact to be emphasized is that, as a condition for receiving federal school lunch funds, each recipient school district must promise to feed needy children at

no charge or at a nominal cost. This is specifically written into the 1946 School Lunch Act, and yet, there are only a handful of school districts, of the thousands receiving federal school lunch funds, which provide free lunches to the poor. From my observations in the South, discussions with people during the Poor People's Campaign, and with our plaintiffs throughout the country, very few poor school children have ever received a free school lunch. Most children have to sit in the lunch room and watch the rich and middle class children eat; others roam around the school yard, go home, or go across the street to get soda pop. Not only are such children supposed to get a lunch for free or at a price which they can afford, but they are to get these entitlements without discrimination. (As an example, children who get a free school lunch should not have to do any work - e.g., in the school kitchen or library - because of such lunch benefits. Also, children receiving free lunches should not be segregated from others, nor should they be singled out in any form that would injure their personal dignity. We know that these specific statutory prohibitions have been violated in many of the districts that provide free school lunches.)

Through more recent legislation, provisions are available for providing breakfasts to school children. The Child Nutrition Act of 1966 specifically states that priorities for setting up

such breakfast programs must be given to schools which draw their student bodies from poor economic areas. This provision is important since appropriations for the program are not very large. Further, the Child Nutrition Act, similar to the School Lunch Act, states that poor children are to receive their breakfasts at nominal prices or for no charge at all. To date, very few poor communities have gotten a breakfast program in their school districts.

Finally, the Child Nutrition Act authorizes that funds can be given to school districts in order to build kitchen facilities. In the most disadvantaged areas, this is extremely important since no feeding programs exist at all due to lack of refrigeration, cooking, and other facilities. Due to laziness, insensitivity, and the like, school officials make no effort to get such facilities, so the poorest of the poor hardly ever get the benefits of the school lunch program. This is a particularly vexsome problem in the big Northern cities. Most of these cities have a large amount of schools - usually in the ghetto - which provide no lunch program whatsoever. This means that no lunches are provided to even the children who can afford them; it means that no federal school lunch funds go to those schools; and it means that the "free lunch" provision for poor children cannot be enforced in these schools.

II. Maladministration of the Programs.

There are numerous areas in the country which, presently, have neither a commodity distribution nor a food stamp program. In most areas, programs are run on a county-wide basis; in New England, the programs are run on a city-wide basis. (In Virginia, the programs are run on an independent city or county basis.) Over 500 of these "communities" have neither program, contradicting the intent of Congress and the Constitution's Equal Protection Clause. (This is the precise issue raised in our 26 lawsuits against the Department.)

In order to pressure for such programs, it must be understood that there is co-responsibility or blame between the Department and local authorities. The usual procedure for initiating a program is a request by the local (county) board of supervisors, or other local governmental agency. The Department does, however, have power to initiate and implement a program on its own (and in fact has done so in 49 counties pursuant to promises made during the Poor People's Campaign). At this point, however, the Department's position is that it will only authorize a food program if it has been requested by local authorities; it refuses to set up any more programs on its own.

Pressure for initiating a program, therefore, can be placed on every level. Probably the best place to begin is on

the county (or city) level, forcing the local authorities to request the program most desired. Sympathetic Congressmen, Senators, and State officials should be persuaded to put their own pressure on local authorities. If this is too slow or local officials are really bad, pressure must be placed on the Department so that it initiates a program on its own. Finally, under the Emergency Food Bill, community action agencies and welfare rights groups can request to run a commodity distribution program independently of local authorities. Certification for running such a program could come from U.S.D.A. (under the commodities legislation) or from O.E.O. (under the Emergency Food legislation). Chances of success with such an application are greater with O.E.O.

A. Food Stamp Issues

Obviously, the issue of greatest importance is the price of the stamps. Everywhere I go to talk about this program, the grievance that most people talk about is the stamp prices. Not only are the stamp prices too expensive for most poor people, they are also excessive of the statutory mandate of the Food Stamp Act. The Act requires that prices for the stamps be set so that they are "equivalent" to a household's "normal expenditures for food." If the prices are set in such fashion, it is clear that most people would be able to purchase their way into the program.

Studies conducted by the United States Commission on Civil Rights indicate that in some counties over 90% of the public assistance recipients are not participating in the program. Although several reasons are responsible for this, the most important impediment to participation has been the purchase price.

Since U.S.D.A. has set the prices, it is the Department that will eventually have to change them. Although there have been several attempts to change the prices (the latest culminating in the lowering of prices for the lowest income groups, as shown on the sheet attached), a necessary complete revision can only come if Congress provides additional funds to run the program. Pressure is needed, however, to induce this additional funding and lowering of the stamp schedules.

Suits can be brought on this issue, the legal theory coming straight from the language in the statute. Local welfare rights groups should plan significant political action as well. Eligible poor people should request fair hearings whenever they cannot afford to pay the purchase price. The claim would be that the change being requested exceeds their normal monthly expenses for food. Demonstrations can also be organized to protest the prices; such demonstrations could be tied to "adequacy of the grant" protests, claiming that the welfare department should be increasing welfare checks so that the stamps can be purchased.

Inevitably, this issue will only be solved if enough heat is generated in many localities so that U.S.D.A. and the Congress feel impelled to lower the purchase prices.

Demands must be made very clearly that food stamp prices should be reduced for all income levels; that families with no income receive stamps for free; and that some flexible procedures be available for providing stamps at still reduced prices during times of particular hardship and when the family simply cannot pay the purchase price.

The next important problem is the question of lump sum payments. In most areas, potential recipients must pay the entire purchase price of the stamps all at once (usually the first week of the month); in some places, two installments are permitted. Obviously this works a great hardship on poor people since the sums that are needed are not easily accumulated. (In most areas, there is very little flexibility on the lump-sum or twice-a-month payment plan; no spreading of payments is tolerated in most communities.)

The lump sum issue should be fought on the state and local level. These rules have been set up pursuant to state and local plans; it is usually the state plan of operation that sets the tone for the local policies. Discussions and negotiations should be conducted with the appropriate local officials for the

necessary change; other types of political action should be taken wherever communications with local officials has broken down. There are no limitations in the statute or regulations which would thwart such local efforts to change the lump sum provisions. The most liberal payment rules are perfectly in accord with the federal legislation and regulations; the only limitation is local resistance to changing rules set up for the sake of administrative expediency. (This issue should be resolved politically since it would be difficult to force a state, through legal action, to change its lump sum rules. We may, however, be able to convince U.S.D.A. to promulgate regulations which would force the states to abandon their lump-sum rules; should this happen, we would then be in a position to provide supportive legal assistance on this issue.)

Another issue worth battling is the adequacy of the total stamp allotment. Although there are valuable benefits to be gained for those who can purchase the stamps, the total allotments are usually significantly below what is needed for providing households with adequate nutritional diets. Very often the stamps run out somewhere in the third week of the month and, since the family has theoretically paid out its normal monthly food expenditures for the stamps, there is no means of adequately

feeding the family. Like the prices of the stamps, the allotment figure has been established by U.S.D.A. and it will require the Department and the Congress to make the necessary changes. (It should be noted that the poorest of the poor get hit the hardest by the schedules. The poorer the family, the smaller the total allotment for the household, regardless of the nutritional needs of the family.) Demonstrations should be organized in many localities in order to voice the need that greater benefits - more stamps - must be provided.

In areas where the food stamp allotments clearly do not meet nutritional needs, and in areas where people cannot pay for the food stamps, attempts should be made to have commodities distributed. This effort will, however, face certain legal obstacles. Under Section 4(b) of the Food Stamp Act, it is clear that a particular area - county or city - can have only one of the federal food programs, not both. The only time when commodities can be distributed in a "food stamp county" is when there is an "emergency" situation. Section 4(b) gives the Secretary of Agriculture a great amount of discretion as to what he deems is such an emergency. Secretary Freeman has decided that <u>only</u> a natural emergency - i.e., earthquakes, tornadoes, floods, etc. - will activate the "emergency" provision; hunger and malnutrition,

he has said, is not the type of emergency that allows commodities to be distributed in food stamp areas. (I think his position is legally untenable and that lawsuits can be brought on this issue.) Whenever local people feel that the stamp allocation is insufficient and/or that numerous people cannot afford the stamps, pressure should be brought on local officials so that they publicly state that the poor community in their jurisdiction is living under "emergency" conditions. Statements and correspondence by local officials should be used to induce the Agriculture Secretary to utilize his emergency powers, thereby allowing commodities to be distributed in food stamp areas.

Some problems might arise over the limitation of places where food stamps are sold. Sometimes there are few places where stamps can be bought - sometimes only at the welfare office - therefore causing poor people travel hardships every month or two weeks. This problem must be resolved on the local level since places for selling the stamps are determined by local authorities. (There usually are very few problems concerning the location of grocery stores where the stamps can be used. Although the certification of stores - for eligibility in the stamp program, thereby enabling such a store to sell the stamps - is supposed to be a decision by the Department, political necessities require such decision to be actually reached on the local level. Therefore,

if store locations are also a problem, pressure should be placed on the local government - i.e., board of supervisors; mayor and councilmen; etc.)

Similar to public assistance, people should voice their feelings about making this program one which will not compromise the dignity of poor people. Rather than go through with an elaborate investigation as to how much income is made by the household, a simple affidavit should suffice to provide all the information that is required to determine eligibility and the amount of money that should be paid for the stamps. A campaign for such a declaratory system can be made on all levels - local, state, and federal. Many state and local officials are, for their own reasons, beginning to look favorably on this issue. The reason is purely financial. Since the state and local governments must pay the full amount for the administration of the program (unlike the food benefits which are paid for exclusively by the federal government), and since cumbersome certification procedures - including investigations, home visits, etc. - often make up 25 to 50% of such costs, it is to a state's advantage to move towards the declaratory system. (The State of Georgia, as an example, has told U.S.D.A. that it cannot afford to run the

stamp program unless either the federal government pays the administrative costs or the state runs the program on the declaratory system.) U.S.D.A. is moving towards a declaratory system in the commodities program but does not feel it should do so under stamps (since under commodities one only determines eligibility and under the stamp program one must determine eligibility and the amount of income for purposes of setting stamp prices); therefore, it is important that political organizing on this issue be encouraged.

In communities that operate the food stamp program, poor people should be talking about the possibility of organizing food coops. If poor people organize and control such coops, and they get certified by U.S.D.A. to sell their food for stamps (a rather easy process), then the poor community will get two benefits: (1) greater food purchasing power through the stamp benefits and (2) profits from the selling of the coop's food for the stamps. The stamps which are used to buy the food are later redeemed by the federal government at their face value, giving the stamps a status of secondary currency.

In line with the question of coops is the shady price-raising practice of grocery stores on the first of the month. When this occurs, complaints should be sent to the Department of Agriculture, the regional office of U.S.D.A., and to local

officials. The raising of prices coinciding with the time that the stamps are usually purchased (and when welfare checks are sent out) is sufficient grounds to de-certify a grocery or chain store from the stamp program. This can be a fairly significant threat to store owners since they receive a heavy volume of business from the stamps. Since families' food purchasing power is increased under the stamp program, it is important to grocers that these additional sales come to them. Where they abuse their participation in the program by over-charging or raising prices during selected times in the months, complaints and demonstrations should be conducted with the objective of getting that store de-certified from the stamp program.

B. Commodity Program Issues

The biggest problem with this program is the lack of benefits that are available under it. In most areas, the retail value of the commodities is approximately eight dollars per person per month. Because of this, it is clear that without an abundance of supplemental food resources, a family is going to be terribly malnourished. The lack of sufficient and good foods is particularly invidious because U.S.D.A. annually returns hundreds of millions of dollars, which are available to improve the program, to the U.S. Treasury.

In order to increase and improve the food, our political and legal efforts should focus on the Department. (I think a big legal effort should be mounted to try to prevent U.S.D.A. from returning the millions of dollars it otherwise would send to the U.S. Treasury at the end of the fiscal year. Since money is the key factor in improving the program, I would like to bring a show-cause suit, with hundreds of plaintiffs from around the country, showing that the dimensions of hunger are immense and that U.S.D.A. is turning its back on the poor by returning these funds. Even should we lose the suit, the political value that is to be gained by it can be very significant.)

Political action should be conducted in many different places in order to show wide support for improving the commodities program. Demonstrations simulating the Boston Tea Party should be conducted; poor people should show their contempt for the commodities program by dumping such handouts from local harbors into the water. Poor people should indicate that they no longer want to be guinea pigs of a surplus removal program; that they want good and nutritious food; and that they demand the right to have enough food regardless of the economic conditions of big farmers. Other imaginative demonstrations should be conducted in order to show that as far as poor people are concerned, the commodities program is a farce. In particular, demonstrations

should focus on the fact that only surplus commodities are handed out (and that this is contrary to law since the program is not limited to surplus items). The "starchy" nature of the foods should be pointed out, there being very few nutritious items - such as fruit, vegetables, and meat - being distributed. Finally, the small amount of food that is handed out should be stressed.

An issue of significance in many communities is the distance that must be travelled monthly in order to pick up the commodities. Since the packages are fairly heavy, poor people must have transportation available to them if they are to have access to the commodity packages. This problem is mainly the result of state and local decisions and, therefore, must be combated on the local level. Negotiations should be started to assure that distribution points be scattered, thereby assuring that long distances need not be traveled by poor people. In the alternative, or in addition, negotiations should press for making the welfare department pay for the transportation costs (since often these costs come out to almost half the value of one's commodities package) or for providing transportation for all those people who need it. At the same time, efforts should be made to assure that distribution days are flexible; this would change local rules in most communities which only allow the

commodities to be picked up on one particular day in the month. Wherever negotiations break down, appropriate political and direct action should be taken.

Similar to the food stamp program, steps should be taken to get local authorities to run the program on the declaratory system. It seems clear that U.S.D.A. is not very far from requiring this step to be taken for the commodities program (unlike its position with the stamp program). State commodity directors in every Northeast state have requested such a change. Here again, the reason for this support by the states is purely economical; they are paying the total amount for the local administration of the program and almost half their expenses arise from elaborate investigations that are conducted prior to certification of eligibility. Local welfare rights groups should galvanize support on this issue, interjecting their feeling about the preservation of poor people's dignity. Complimenting the economical argument of local administrators, the local welfare rights organization can provide the final necessary push for getting the declaratory system implemented.

C. School Lunch Issues

The first major problem that must be confronted is the fact that there are many schools throughout the country which do not provide a school lunch program at all. In those schools, not only are no lunches provided to the children who can afford to pay for them, but no federal school lunch funds are provided to that school and there is no way to enforce federal statutory provisions forcing the school to provide needy children with free lunches. This problem is most prevalent in the Northern inner cities; a large percentage of the ghetto schools have no facilities for the lunch program and, therefore, do not provide meal services to its students.

This is an issue in which we feel we are prepared to provide supportive legal action. The failure to provide lunches in the ghetto schools, while schools in middle class communities are getting food services, is a blatant violation of the Equal Protection clause; it is probably violative of some of the School Lunch Act provisions as well. We would very much like to bring law suits in each of the areas which do not provide lunch programs.

As far as political action is concerned on this issue, the focus must be on the local (city or county) school district as well as the state educational agency. Pressure should be mounted to get the school district in question to use the funds

it has available to provide kitchen and cafeteria facilities. Under the Child Nutrition Act of 1966, there is money available to each state so that such facilities can be purchased; under the Act, the federal government provides valuable financial assistance to these school districts. It seems that the main problem in this area is the willingness of local school officials to request such funds and then to properly use them.

Negotiations should be conducted with local school officials in order that they see to it that all schools, especially the ones that draw predominatedly from poor areas, provide school lunches. This is also true for the breakfast program; although there are limited funds for this program, school officials should be encouraged to request breakfast programs. Especially since the legislation specifically states that preferences of funding should be given to schools that draw their student bodies from impoverished communities, emphasis should be made on using the federal breakfast funds in ghetto or other economically disadvantaged schools.

The next problem arises from school districts' non-compliance with federal statutory and regulatory requirements that poor children receive free lunches (or receive them at substantially reduced prices). The "free lunch" provision is effective only

where the school in question is providing lunch service, hence the importance of solving the first problem raised in this subsection. Even in the schools and districts which provide lunches, very few of them are providing free or reduced price lunches and very few will probably change this malpractice in the near future.

U.S.D.A. has finally promulgated regulations which are intended to enforce the 1946 School Lunch Act's requirement of free lunches. Under these regulations, each school district must come up with plans and guidelines for providing free lunches to needy children by February 1, 1969. According to the regulations, if this is not done, such school districts will have their federal school lunch funds cut off. Although the regulations are clear on this matter, the enforcement of its provisions will probably cause vexsome problems. In particular, U.S.D.A. has not set up any kind of a monitoring system to check up on whether local districts will comply with the regulations. Further, I think it is very doubtful that U.S.D.A. would ever have the backbone to unilaterally decide to cut off funds.

Because of this, it is important that poor people get organized around the free lunch issue. Wherever local officials refuse to comply, protests should be sent to U.S.D.A. and demonstrations should be conducted on a local level. In most

instances, local officials are going to say that they cannot comply with the "free lunch" provision because they do not have enough money. There is a very strong response to that defense which should be articulated: Under the funding provisions of the School Lunch Act, federal payments are to be made on a matching basis. The reason that there are not enough funds is because almost all of the states do not provide the matching funds. Most of the states feel that their matching requirement is satisfied by charging rich and middle class students a price for their lunches. (In other words, the approximately 35¢ which is spent by children for their lunches is deemed the state's contribution even though no money has been allocated from the State's treasury.) I believe this to be not only a shirking of state responsibility, but a violation of the law as well.

Litigation on this issue could be immensely helpful. Since the failure to provide school lunches to children who cannot afford them is a clear violation of the statute and the new regulations, remedial action can be provided through the courts. Organized protests to U.S.D.A. should be encouraged so that the Department lives up to its proposed "cut-off" sanction in instances of non-compliance. Protests should be directed against the state legislature for failing to come up with the

required matching funds. Protests should be directed against the state educational agency for failing to assure that funds would be spent properly (such as providing the required free lunches). And protests should be directed against school district officials and school principals for failing to live up to the federal requirement. (Since local officials have accepted federal funds on the condition that they provide free lunches to the needy, local organizers can say that they will make every effort to cut off that district's school lunch funds; since these appropriations are often fairly large, many districts might relent due to their fear of putting these funds in jeopardy.)

Local organizers should make sure that there is no discrimination practiced against children who get their lunches for free. The federal regulations suggest some of these discriminations and make very clear that such discriminations are impermissible. The regulations state that poor children should not be required, as a condition for receiving such free meals, to: use a separate lunchroom; go through a separate serving line; enter the lunchroom through a separate entrance; eat lunch at a different time from paying children; work for their meal; use a different medium of exchange in the lunchroom than paying children use; and eat a different meal than paying children.

Whenever violations of the above occur, legal action can be successfully taken to prevent them from continuing. Protests

should be sent to U.S.D.A. and to state educational officials. Since they will probably react very slowly to such complaints, protests should be conducted on a local level if negotiations are not fruitful.

State of California

Department of Social Welfare
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FOOD STAMP PROGRAM

ADJUSTED NET INCOME BASIS OF COUPON ISSUANCE

Monthly

NOTE: First Month Purchase May Be 50% of the Amount Shown.

Adjusted Monthly - Net Income	Number in Household																	
	One			Two			Three			Four			Five			Six		
	Purchase	Total	Bonus	Purchase	Total	Bonus	Purchase	Total	Bonus	Purchase	Total	Bonus	Purchase	Total	Bonus	Purchase	Total	Bonus
$ 0 - $ 19.99	50¢	$ 14	$13.50	$ 1	$ 24	$ 23	$ 1.50	$ 38	$36.50	$ 2	$ 52	$ 50	$ 2.50	$ 60	$57.50	$ 3	$ 70	$ 67
20 - 29.99	$ 6	16	10	6	28	22	8	42	34	8	52	44	8	60	52	8	70	62
30 - 39.99	10	18	8	12	30	18	14	44	30	14	56	42	14	64	50	14	72	58
40 - 49.99	12	20	8	16	34	18	18	48	30	20	60	40	20	68	48	20	76	56
50 - 59.99	14	22	8	18	36	18	22	50	28	24	64	40	24	72	48	24	80	56
60 - 69.99	16	22	6	20	38	18	26	54	28	28	66	38	30	76	46	30	84	54
70 - 79.99	16	22	6	24	40	16	30	56	26	32	70	38	34	80	46	34	88	54
80 - 89.99	18	24	6	28	44	16	34	60	26	36	72	36	38	82	44	40	92	52
90 - 99.99	18	24	6	28	44	16	38	62	24	40	76	36	42	86	44	44	96	52
100 - 109.99	20 1/	26 1/	6 1/	32	48	16	44	68	24	44	78	34	46	88	42	48	98	50
110 - 119.99	No change in amounts for income in excess of $100			32	48	16	44	68	24	48	82	34	50	92	42	52	100	48
120 - 129.99				36	50	14	50	72	22	52	84	32	54	94	40	56	102	46
130 - 139.99				36	50	14	50	72	22	52	84	32	56	94	38	60	104	44
140 - 159.99				40 1/	52 1/	12 1/	54	74	20	56	86	30	60	96	36	64	106	42
160 - 179.99				No change in amounts for income in excess of $140			58	76	18	60	88	28	64	98	34	68	108	40
180 - 199.99							62	80	18	64	90	26	68	100	32	72	110	38
200 - 219.99							66	84	18	68	92	24	72	102	30	76	112	36
220 - 239.99							70	88	18	72	96	24	76	104	28	80	114	34
240 - 259.99							74	92	18	76	100	24	80	108	28	84	116	32
260 - 269.99							74	92	18	76	100	24	84	112	28	88	120	32
270 - 279.99							78	96	18	80	104	24	84	112	28	88	120	32
280 - 299.99							78	96	18	80	104	24	88	116	28	92	124	32
300 - 329.99							82	100	18	84	108	24	92	120	28	96	128	32
330 - 359.99							86	104	18	88	112	24	96	124	28	100	132	32
360 - 389.99							90	108	18	92	116	24	100	128	28	104	136	32
390 - 419.99							94	112	18	96	120	24	104	132	28	108	140	32
420 - 449.99 2/							98	116	18	100	124	24	108	136	28	112	144	32

1/ Use these figures for all adult categories (fixed basis of coupon issuance).

2/ For each $30 additional income or portion thereof, add $4 to the puchase requirement.

State of California

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FOOD STAMP PROGRAM

ADJUSTED NET INCOME BASIS OF COUPON ISSUANCE

Monthly

NOTE: First Month Purchase May Be 50% of the Amount Shown.

Adjusted Monthly Net Income	Number in Household											
	Seven			Eight			Nine			Ten 1/		
	Purchase	Total	Bonus	Purchase	Total	Bonus	Purchase	Total	Bonus	Purchase	Total	Bonus
$ 0 - $ 19.99	$ 3	$ 78	$ 75	$ 3	$ 86	$ 83	$ 3	$ 90	$ 87	$ 3	$ 94	$ 91
20 - 29.99	8	78	70	8	86	78	8	90	82	8	94	86
30 - 39.99	14	78	64	14	86	72	14	90	76	14	94	80
40 - 49.99	20	82	62	20	88	68	20	92	72	20	96	76
50 - 59.99	24	86	62	24	92	68	24	96	72	24	100	76
60 - 69.99	30	90	60	30	96	66	30	100	70	30	104	74
70 - 79.99	34	94	60	34	100	66	34	104	70	34	108	74
80 - 89.99	40	98	58	40	104	64	40	108	68	40	112	72
90 - 99.99	44	102	58	44	108	64	44	112	68	44	116	72
100 - 109.99	50	106	56	50	112	62	50	116	66	50	120	70
110 - 119.99	54	108	54	54	114	60	54	118	64	54	124	68
120 - 129.99	58	110	52	58	116	58	58	120	62	58	124	66
130 - 139.99	62	112	50	62	118	56	62	122	60	62	126	64
140 - 149.99	66	114	48	66	120	54	66	124	58	66	128	62
150 - 159.99	68	114	46	70	124	54	70	128	58	70	132	62
160 - 179.99	72	118	46	74	126	52	74	130	56	74	134	60
180 - 199.99	76	120	44	78	128	50	78	132	54	78	136	58
200 - 219.99	80	122	42	82	130	48	82	134	52	82	138	56
220 - 239.99	84	124	40	86	132	46	86	136	50	86	140	54
240 - 259.99	88	126	38	90	134	44	90	138	48	90	142	52
260 - 279.99	92	128	36	94	136	42	94	140	46	94	144	50
280 - 299.99	96	132	36	98	138	40	98	142	44	98	146	48
300 - 319.99	100	136	36	102	142	40	102	146	44	102	150	48
320 - 339.99	104	140	36	106	146	40	106	150	44	106	154	48
340 - 359.99	108	144	36	110	150	40	110	154	44	110	158	48
360 - 389.99	112	148	36	114	154	40	114	158	44	114	162	48
390 - 419.99	116	152	36	118	158	40	118	162	44	118	166	48
420 - 449.99 2/	120	156	36	122	162	40	122	166	44	122	170	48

1/ For more than ten, add $4 to bonus amount for each person in excess of ten.

2/ For each $30 additional income or portion thereof, add $4 to purchase requirement.

The table which follows is the official scale for the issuance of food stamps and shows, for each size of household, the household's income, the amount they must pay for stamps and the number of stamps they should receive.

MONTHLY NET INCOME	MONTHLY BUY	MONTHLY BONUS	MONTHLY TOTAL (face value of stamps)	SEMI-MONTHLY PURCHASE	SEMI-MONTHLY BONUS	SEMI-MONTHLY TOTAL
ONE-PERSON HOUSEHOLD						
$ 0 - 9.99	$ .50	$ 11.50	$ 12	$ .25	$ 5.75	$ 6
10 - 12.99	2	12.	14	1	6	7
20 - 29.99	4	10.	14	2	5	7
30 - 39.99	8	8	16	4	4	8
40 - 49.99	10	8	18	5	4	9
50 - 59.99	12	6	18	6	3	9
60 - 69.99	14	6	20	7	3	10
70 - 89.99	16	6	22	8	3	11
90 & over	18	6	24	9	3	12
TWO-PERSON HOUSEHOLD						
$ 0 - 19.99	$ 1	$ 23	$ 24	$ .50	$ 11.50	$12
20 - 29.99	6	22	28	3	11	14
30 - 39.99	10	20	38	5	10	15
40 - 49.99	16	18	34	8	9	17
50 - 59.99	18	18	36	9	9	18
60 - 79.99	20	18	38	10	9	19
80 - 99.99	24	14	38	12	7	19
100 - 119.99	28	12	40	14	6	20
120 - 139.99	32	10	42	16	5	21
140 & over	36	10	46	18	5	23

COUPON BASIS OF ISSUANCE

MONTHLY NET INCOME	MONTHLY PURCHASE	MONTHLY BONUS	MONTHLY TOTAL	SEMI-MONTHLY PURCHASE	SEMI-MONTHLY BONUS	SEMI-MONTHLY TOTAL
THREE-PERSON HOUSEHOLD						
$ 0 - 19.99	$ 1.50	$ 36.50	$ 38	$ .75	$18.25	$ 19
20 - 29.99	6	32	38	3	16	19
30 - 39.99	10	30	40	5	15	20
40 - 49.99	16	26	42	8	13	21
50 - 59.99	20	24	44	10	12	22
60 - 69.99	24	24	48	12	12	24
70 - 79.99	28	22	50	14	11	25
80 - 89.99	32	22	54	16	11	27
90 - 109.99	36	20	56	18	10	28
110 - 129.99	42	18	60	21	9	30
130 - 149.99	46	16	62	23	8	31
150 - 169.99	50	14	64	25	7	32
170 - 189.99	54	14	68	27	7	34
190 - 209.99	58	14	72	29	7	36
210 - 229.99	62	14	76	31	7	38
230 - 249.99	66	14	80	33	7	40

NOTE: To extend tables for households with incomes above the maximum shown, refer to Instructions, Form FS-17.

COUPON BASIS OF ISSUANCE

MONTHLY NET INCOME	MONTHLY PURCHASE	MONTHLY BONUS	MONTHLY TOTAL	SEMI-MONTHLY PURCHASE	SEMI-MONTHLY BONUS	SEMI-MONTHLY TOTAL
FOUR-PERSON HOUSEHOLD						
$ 0 - 29.99	$ 2	$ 46	$ 48	$ 1	$23	$24
30 - 39.99	10	42	52	5	21	26
40 - 49.99	16	40	56	8	20	28
50 - 59.99	22	36	58	11	18	29
60 - 69.99	26	34	60	13	17	30
70 - 79.99	30	34	64	15	17	32
80 - 89.99	36	32	68	18	16	34
90 -109.99	40	30	70	20	15	35
110 -129.99	44	26	70	22	13	35
130 -149.99	48	24	72	24	12	36
150 -169.99	52	22	74	26	11	37
170 -189.99	56	22	78	28	11	39
190 -209.99	60	20	80	30	10	40
210 -229.99	64	18	82	32	9	41
230 -249.99	68	18	86	34	9	43
250 -279.99	72	18	90	36	9	45
280 -309.99	76	18	94	38	9	47

NOTE: To extend tables for households with incomes above the maximum shown, refer to Instructions, Form FS-17.

COUPON BASIS OF ISSUANCE

MONTHLY NET INCOME	MONTHLY PURCHASE	MONTHLY BONUS	MONTHLY TOTAL	SEMI-MONTHLY PURCHASE	SEMI-MONTHLY BONUS	SEMI-MONTHLY TOTAL
		FIVE-PERSON HOUSEHOLD				
$ 0 - 29.99	$ 2.50	$ 57.50	$ 60	$ 1.25	$ 28.75	$ 30
30 - 39.99	10	54	64	5	27	32
40 - 49.99	16	48	64	8	24	32
50 - 59.99	22	44	66	11	22	33
60 - 69.99	26	42	68	13	21	34
70 - 79.99	30	40	70	15	20	35
80 - 89.99	36	38	74	18	19	37
90 - 99.99	40	36	76	20	18	38
100 - 109.99	44	34	78	22	17	39
110 - 129.99	48	32	80	24	16	40
130 - 149.99	52	30	82	26	15	41
150 - 169.99	56	28	84	28	14	42
170 - 189.99	60	26	86	30	13	43
190 - 209.99	64	24	88	32	12	44
210 - 229.99	68	24	92	34	12	46
230 - 249.99	72	22	94	36	11	47
250 - 269.99	76	22	98	38	11	49
270 - 289.99	80	22	102	40	11	51
290 - 319.99	84	22	106	42	11	53
320 - 349.99	88	22	110	44	11	55

NOTE: To extend tables for households with incomes above the maximum shown, refer to Instructions, Form FS-17.

COUPON BASIS OF ISSUANCE

MONTHLY NET INCOME	MONTHLY PURCHASE	MONTHLY BONUS	MONTHLY TOTAL	SEMI-MONTHLY PURCHASE	SEMI-MONTHLY BONUS	SEMI-MONTHLY TOTAL
SIX-MEMBER HOUSEHOLD						
$ 0 - 29.99	$ 3	67	$ 70	$ 1.50	$ 33.50	$ 35
30 - 39.99	10	62	72	5	31	36
40 - 49.99	16	56	72	8	28	36
50 - 59.99	22	52	74	11	26	37
60 - 69.99	26	50	76	13	25	38
70 - 79.99	32	48	80	16	24	40
80 - 89.99	38	46	84	19	23	42
90 - 99.99	42	44	86	21	22	43
100 - 109.99	46	42	88	23	21	44
110 - 119.99	50	40	90	25	20	45
120 - 129.99	52	38	90	26	19	45
130 - 149.99	56	36	92	28	18	46
150 - 169.99	60	34	94	30	17	47
170 - 189.99	64	32	96	32	16	48
190 - 209.99	68	30	98	34	15	49
210 - 229.99	72	28	100	36	14	50
230 - 249.99	76	26	102	38	13	51
250 - 269.99	80	26	106	40	13	53
270 - 289.99	84	26	110	42	13	55
290 - 319.99	88	26	114	44	13	57
320 - 349.99	92	26	118	46	13	59

NOTE: To extend tables for households with incomes above the maximum shown, refer to Instructions, Form FS-17.

COUPON BASIS OF ISSUANCE

MONTHLY NET INCOME	MONTHLY PURCHASE	MONTHLY BONUS	MONTHLY TOTAL	SEMI-MONTHLY PURCHASE	SEMI-MONTHLY BONUS	SEMI-MONTHLY TOTAL
SEVEN-PERSON HOUSEHOLD						
$ 0 - 29.99	$ 3	$ 73	$ 76	$ 1.50	$ 36.50	$ 38
30 - 39.99	10	68	78	5	34	39
40 - 49.99	16	62	78	8	31	39
50 - 59.99	22	58	80	11	29	40
60 - 69.99	26	56	82	13	28	41
70 - 79.99	32	54	86	16	27	43
80 - 89.99	38	52	90	19	26	45
90 - 99.99	42	50	92	21	25	46
100 - 109.99	46	48	94	23	24	47
110 - 119.99	50	46	96	25	23	48
120 - 129.99	54	44	98	27	22	49
130 - 139.99	58	42	100	29	21	50
140 - 149.99	60	40	100	30	20	50
150 - 169.99	64	38	102	32	19	51
170 - 189.99	68	36	104	34	18	52
190 - 209.99	72	34	106	36	17	53
210 - 229.99	76	32	108	38	16	54
230 - 249.99	80	30	110	40	15	55
250 - 269.99	84	30	114	42	15	57
270 - 289.99	88	30	118	44	15	59
290 - 309.99	92	30	122	46	15	61
310 - 329.99	96	30	126	48	15	63
330 - 349.99	100	30	130	50	15	65

NOTE: To extend tables for households with incomes above the maximum shown, refer to Instructions, Form FS-17.

COUPON BASIS OF ISSUANCE

MONTHLY NET INCOME	MONTHLY PURCHASE	MONTHLY BONUS	MONTHLY TOTAL	SEMI-MONTHLY PURCHASE	SEMI-MONTHLY BONUS	SEMI-MONTHLY TOTAL
EIGHT-PERSON HOUSEHOLD						
$ 0 - 29.99	$ 3	$ 79	$ 82	$ 1.50	$ 39.50	$ 41
30 - 39.99	10	74	84	5	37	42
40 - 49.99	16	68	84	8	34	42
50 - 59.99	22	64	86	11	32	43
60 - 69.99	26	62	88	13	31	44
70 - 79.99	32	60	92	16	30	46
80 - 89.99	38	58	96	19	29	48
90 - 99.99	42	56	98	21	28	49
100 - 109.99	46	54	100	23	27	50
110 - 119.99	50	52	102	25	26	51
120 - 129.99	54	50	104	27	25	52
130 - 139.99	58	48	106	29	24	53
140 - 149.99	62	46	108	31	23	54
150 - 169.99	66	44	110	33	22	55
170 - 189.99	70	42	112	35	21	56
190 - 209.99	74	40	114	37	20	57
210 - 229.99	78	38	116	39	19	58
230 - 249.99	82	36	118	41	18	59
250 - 269.99	86	34	120	43	17	60
270 - 289.99	90	34	124	45	17	62
290 - 309.99	94	34	128	47	17	64
310 - 329.99	98	34	132	49	17	66
330 - 349.99	102	34	136	51	17	68
350 - 379.99	106	34	140	53	17	70

NOTE: To extend tables for households with incomes above the maximum shown, refer to Instructions, Form FS-17.

COUPON BASIS OF ISSUANCE

MONTHLY NET INCOME	MONTHLY PURCHASE	MONTHLY BONUS	MONTHLY TOTAL	SEMI-MONTHLY PURCHASE	SEMI-MONTHLY BONUS	SEMI-MONTHLY TOTAL
NINE-PERSON HOUSEHOLD						
$ 0 - 29.99	$ 3	$ 83	$ 86	$ 1.50	$ 41.50	$ 43
30 - 39.99	10	78	88	5	39	44
40 - 49.99	16	72	88	8	36	44
50 - 59.99	22	68	90	11	34	45
60 - 69.99	26	66	92	13	33	46
70 - 79.99	32	64	96	16	32	48
80 - 89.99	38	62	100	19	31	50
90 - 99.99	42	60	102	21	30	51
100 - 109.99	46	58	104	23	29	52
110 - 119.99	50	56	106	25	28	53
120 - 129.99	54	54	108	27	27	54
130 - 139.99	58	52	110	29	26	55
140 - 149.99	62	50	112	31	25	56
150 - 169.99	66	48	114	33	24	57
170 - 189.99	70	46	116	35	23	58
190 - 209.99	74	44	118	37	22	59
210 - 229.99	78	42	120	39	21	60
230 - 249.99	82	40	122	41	20	61
250 - 269.99	86	38	124	43	19	62
270 - 289.99	90	38	128	45	19	64
290 - 309.99	94	38	132	47	19	66
310 - 329.99	98	38	136	49	19	68
330 - 349.99	102	38	140	51	19	70
350 - 379.99	106	38	144	53	19	72

NOTE: To extend tables for households with incomes above the maximum shown, refer to Instructions, Form FS-17.

COUPON BASIS OF ISSUANCE

MONTHLY NET INCOME	MONTHLY PURCHASE	MONTHLY BONUS	MONTHLY TOTAL	SEMI-MONTHLY PURCHASE	SEMI-MONTHLY BONUS	SEMI-MONTHLY TOTAL
	TEN-PERSON HOUSEHOLD					
$ 0 - 29.99	$ 3	$ 87	$ 90	$ 1.50	$ 43.50	$ 45
30 - 39.99	10	82	92	5	41	46
40 - 49.99	16	76	92	8	38	46
50 - 59.99	22	72	94	11	36	47
60 - 69.99	26	70	96	13	35	48
70 - 79.99	32	68	100	16	34	50
80 - 89.99	38	66	104	19	33	52
90 - 99.99	42	64	106	21	32	53
100 - 109.99	46	62	108	23	31	54
110 - 119.99	50	60	110	25	30	55
120 - 129.99	54	58	112	27	29	56
130 - 139.99	58	56	114	29	28	57
140 - 149.99	62	54	116	31	27	58
150 - 169.99	66	52	118	33	26	59
170 - 189.99	70	50	120	35	25	60
190 - 209.99	74	48	122	37	24	61
210 - 229.99	78	46	124	39	23	62
230 - 249.99	82	44	126	41	22	6[illegible]
250 - 269.99	86	42	128	43	21	6[illegible]
270 - 289.99	90	42	132	45	21	6[illegible]
290 - 309.99	94	42	136	47	21	6[illegible]
310 - 329.99	98	42	140	49	21	7[illegible]
330 - 349.99	102	42	144	51	21	7[illegible]
350 - 379.99	106	42	148	53	21	7[illegible]

NOTE: To extend tables for households with incomes above the maximum shown, refer to Instructions, Form FS-17. Use the purchase requireme by income level for 10-person households. Add $4 to the monthly bonu and total, or $ to the semi-monthly bonus and total, for each person in excess of ten.

FOOD STAMP PROGRAM

Recommended Modifications in the Bonus of Coupon Issuance

Four Person Household in the North

Monthly Net Income	Current			Proposed		
	Purchase	Bonus	Total	Purchase	Bonus	Total
Under $20	2	50	52	2	58	60
$20 - 29.99	8	44	52	6	54	60
30 - 39.99	14	42	56	10	52	62
40 - 49.99	20	40	60	14	48	62
50 - 59.99	24	40	64	20	44	64
60 - 69.99	28	38	66	26	40	66

Recommended Modifications in the Bonus of Coupon Issuance

Four Person Household in the South

Monthly Net Income	Current			Proposed		
	Purchase	Bonus	Total	Purchase	Bonus	Total
Under $30	2	46	48	2	56	58
$30 - 39.99	10	42	52	8	50	58
49 - 49.99	16	40	56	12	48	60
50 - 59.99	22	36	58	18	42	60
60 - 69.99	26	34	60	24	38	62

DELTA DIVISION

MARY WEST, VIOLA KING, OLLIE JOHNSON, SIMON MILLER, LONNIE COLEMAN, LIELA STEWART, LORENZO ROBINSON, MAMIE S. SCALES, CORDIE WADE, MARY WATKINS, JUANITA HILL, EDNA MAE GARNER, MATTIE STALEY, ALBERTA DAVIS, WILLIE B. JORDAN, CASSIE ANNE BURIES, MARY GRANT, ETHEL ODELL, TOWERS HATTIE MOORE, ANNIE HAWKINS, LULA WATTS JAMES, PERLIE ALEXANDER, LAURA LEE WALLACE, individually, in behalf of their families, and in behalf of all those similarly situated,	)	
PLAINTIFFS,	)	
V.	)	CAUSE NO. _____
UNITED STATES DEPARTMENT OF AGRICULTURE; CLIFFORD M. HARDIN, individually and in his capacity as Secretary of the United States Department of Agriculture; and ROY W. LENNARTSON, individually and in his capacity as Administrator of the Consumer and Marketing Service, United States Department of Agriculture,	)	
DEFENDANTS.	)	

C O M P L A I N T

I. Cause of Action

This is a civil action for injunctive and declaratory relief. It arises under the Constitution and laws of the United States, including: the Fifth Amendment to the United States Constitution; 7 U.S.C. §§2011-2025, creating the Food Stamp Program; and 5 U.S.C. §§701-706, establishing the Administrative Procedure Act. A declaration of rights is sought under 28 U.S.C. §§2201, 2202.

Injunctive and declaratory relief is sought to enable needy residents of ~~Mississippi~~ Ohio, eligible to receive food stamp entitlements, to purchase such food stamps in accordance with the provisions of the Food Stamp Act and the dictates of Due Process. In particular, plaintiffs complain that the prices of food stamps (Appendix A), set by the defendants herein, have been fixed prohibitively high, in violation of Section 2016(b) of the Food Stamp Act. This provision mandates that the charges for food stamps to eligible households "be equivalent to their normal expenditures for food." Defendants, as more fully set out below, have established food stamp prices without regard to plaintiffs' normal expenditures for food and far in excess of such normal expenditures, thereby preventing plaintiffs from receiving their statutory entitlements.

II. Jurisdiction

Jurisdiction is conferred on the Court by 28 U.S.C. §§1331, 1332, 1337, 1346, and 1361, and by 5 U.S.C. §702. The amount in controversy herein exceeds, exclusive of interest and costs, the sum of $10,000.

III. Plaintiffs and Their Class

Plaintiffs are all citizens of the United States and reside in the State of ~~Mississippi~~ Ohio. Because of their poverty, plaintiffs are unable to purchase a nutritionally adequate diet for themselves and their families. Each is therefore eligible for the Food Stamp Program but has been deprived of such benefits due to defendants' excessive prices for such stamps.

Plaintiffs bring this action, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on their own behalf, on behalf of the members of their families, and on behalf of all of the needy citizens of ~~Mississippi~~ Ohio who have been charged food stamp prices in excess of their normal food expenditures. There are questions of law and fact common to all plaintiffs and the members of the class

are so numerous as to make joinder of parties impracticable. The claims of the plaintiffs are typical of the claims of all members of the class and the plaintiffs fairly and adequately represent the claims of all members of the class.

IV. Defendants

Defendant Clifford M. Hardin is the Secretary of the United States Department of Agriculture and is responsible for the implementation and execution of the Food Stamp Program. Defendant Roy W. Lennartson is the Administrator of the Consumer and Marketing Service of the United States Department of Agriculture (the agency charged under the federal regulations with administering the Food Stamp Program). Defendants are responsible for the establishment of the unlawful food stamp prices complained of herein.

V. Description of the Food Stamp Program

The Food Stamp Program was created by the Congress of the United States in 1964 in order "to safeguard the health and well-being of the nation's population and raise levels of nutrition among low-income households." 7 U.S.C. §2011. Under the Food Stamp Act, supra, the defendant Secretary is charged with formulating and administering a Food Stamp Program providing households--whose income is determined to be insufficient to provide adequate food sustenance--with "an opportunity more nearly to obtain a low-cost nutritionally adequate diet." 7 U.S.C. §2016(a). This is done by issuing food stamps to such impoverished families in an amount which has a value greater than the price, if any, paid for such stamps. These stamps can then be used to purchase domestic food, other than liquor and tobacco, at grocery stores certified by the Department of Agriculture to sell food for stamps. Thus the Food Stamp Program multiplies the food purchasing power of needy families.

The Food Stamp Act makes it the task of state welfare agencies, subject to the Secretary's approval, to establish eligibility standards for participation in the program. 7 U.S.C. §2014(b). The

households determined to be eligible to receive stamps are then to "be charged such portion of the face value of the coupon allotment issued to them as is determined to be equivalent to their normal expenditures for food." 7 U.S.C. §2016(b).

VI. Description of Defendants' Unlawful Practices

The defendants herein are solely responsible for setting food stamp prices in ~~Mississippi~~ Ohio. The statutory standard of such prices is that they be "equivalent" to a household's "normal expenditures for food." 7 U.S.C. §2016(b) (Emphasis added.) Implicit in this statutory directive is that defendants take into account the individual household's consumption habits, price differentials from area to area, different food purchasing needs of rural as opposed to urban residents, and numerous other circumstances and factors which affect a household's normal food expenditures. None of this has been done by the defendants.

Instead, the defendants have prescribed an inflexible table of stamp prices applicable not only throughout the State of ~~Mississippi~~ Ohio, but in ~~nine other Southeastern states as well~~ (Appendix A). This table is based solely on two factors: size of household and income. Prices of food stamps for families with similar income and household-size are identical in rural Mississippi, urban Mississippi, throughout Alabama, Arkansas, Georgia (including the City of Atlanta), Kentucky, Louisiana (including the City of New Orleans), North Carolina, South Carolina, Tennessee, and Virginia. Differing family needs, environments, living conditions, economic circumstances, and differing community conditions, price levels, and all other relevant factors which determine a family's normal food expenditures, are entirely excluded in the assessment of food stamp charges. Without taking into account these and other considerations, and in disregard of the fact that the prices are substantially higher than plaintiffs' and other impoverished households' normal food expenditures, the

tables conclusively prescribe the prices which applicants must pay if they wish to get stamps. Persons, who claim and can demonstrate that their normal food expenditures are significantly less than the prices charged, are given no opportunity whatsoever to show that the prices are unlawfully excessive. Either applicants pay exactly what is indicated on the inflexible table, or they receive no federal food benefits whatsoever.

VII. Description of Plaintiffs and The Harm Caused By Defendants' Unlawful Actions

This action is brought by twenty-three named plaintiffs. Plaintiffs WEST, STALEY, DAVIS, JORDAN, BURIES, GRANT, ODELL, MOORE, HAWKINS and JAMES are residents of Bolivar County, Mississippi. Plaintiffs KING, JOHNSON, MILLER, COLEMAN, STEWART, ROBINSON, SCALES, WADE, and WATKINS reside in the City of Greenwood in Leflore County, Mississippi. Plaintiffs ALEXANDER and WALLACE are residents of Tallahatchie County, Mississippi. Plaintiffs HILL and GARNER are residents of the City of Greenville in Washington County, Mississippi.

All of said named plaintiffs are needy persons who are eligible for the benefits under the Food Stamp Act of 1964. However, they have all been charged food stamp prices which are in excess of their normal monthly food expenditures, and far in excess of the resources that they have available to them. Therefore, said plaintiffs have not received food stamps at all or have obtained them with donations from local charities and poverty organizations or by placing themselves in debt. Exemplary of the conditions confronting all of the named plaintiffs, and the class they represent, are the following:

(1) Plaintiff Mary Watkins resides in Greenwood, Mississippi, with her 7 children. She receives a monthly A.F.D.C. grant of $64. Her only additional income derives from her employment as a domestic, two days a week, earning $6 a week. Her monthly expenses include: $22 for rent; between $10 to $15 for the gas bill; about $9 for the light bill; and over $2 for burial insurance. She incurs expenses, as well, for the children's school supplies and clothing. Her

medical expenses are high and she presently owes a doctor bill of $190.

Mrs. Watkins has been unable to obtain the food stamps for over a year. In order to get the stamps, plaintiff Watkins must pay a monthly food stamp charge of $46, which is more than half of her monthly income. The amount of money charged is always more than the Watkins household has available to it and is significantly more than its normal monthly expenditures for food. Plaintiff Watkins used to receive commodities under the Direct Distribution Program, but when Leflore County switched to the Food Stamp Program, she no longer received federal food assistance. As a result, plaintiff Watkins provides her children usually two meals a day consisting, almost solely, of fats and starches.

(2) Plaintiff Mrs. Annie Hawkins resides in Merigold, Mississippi, with her husband and sister. Both the plaintiff and her husband are 68 years old. The only income that the family receives derives from a $51 monthly Social Security check and a $48 monthly grant for Old Age Assistance. Although the three-member household pays no house rent, their expenses are very high. The monthly expenses include: light bill approximately $13; gas about $6; coal for heating the house about $18; wood for heating costs an additional $12; $1.50 for burial insurance; and $18 for installment payments for a bed and mattress.

Medical expenses are very high, since each member of the household is physically ill. Plaintiff Hawkins has high blood pressure, severe arthritis, nervous attacks which cause her to black out, and a skin rash. Her husband has arthritis, swollen glands, and chronic sinus problems. Plaintiff's sister has asthma, a skin rash, and constant nervous attacks. Periodic check-ups with local doctors have significantly increased the household's expenses.

The household has never been able to afford the monthly food stamp purchases. In order to obtain the stamps, defends require that

plaintiff Hawkins pay $48 per month--nearly half the family's total monthly income. This purchase requirement is much more than the family can afford and is significantly higher than the household's normal monthly food expenditures. The family has been unable to purchase a nutritionally adequate diet with its limited resources and, despite low monthly food expenditures, is nevertheless in debt with the local grocer.

(3) Plaintiff Mrs. Lula Watts James is 79 years old. Her only source of income derives from a monthly Old Age Assistance grant of $50. Her monthly expenses include: $12 for house rent; $7.82 (February 1969) to satisfy the gas bill; $4.11 (February 1969) for the light bill; $4.50 (February 1969) for the water bill; $15 for installment payments on the purchase of a stove; and $.90 for burial insurance. She also has periodic medical expenses, since she has asthma, rheumatism, and high blood presure.

Mrs. Jones was unable to purchase food stamps in February 1969. She is never able to afford the $10 monthly purchase requirement for the stamps since the stamp charge is higher than her normal monthly food expenditures. She obtained the stamps several times before, however, because she was donated money by STAR, Inc. out of emergency medical and food funds. Since the availability of these donations are irregular, plaintiff James has frequently been unable to obtain the stamps.

(4) Plaintiff Liela Stewart lives in Greenwood, Mississippi with her husband and 7 children. Both Mr. and Mrs. Stewart are unemployed due to physical conditions that have incapacitated them. Mrs. Stewart, among other physical ailments, has an aggravated case of asthma; Mr. Stewart has a severely injured knee cap which he hurt while working at an elevator coop and which makes it difficult for him to walk.

The total income that the nine-member household receives is a $39 monthly disability check. Out of this meager income, plaintiff

Stewart must pay the following expenses: $7.50 a week for house rent; light bill (for February 1969) of $9.41; and $2.90 a month for burial insurance. The plaintiff's household has been without heat because the family could not afford to pay its gas bill (of $28) and has had its gas supply cut off. Outstanding debts that the family is trying to pay include an $82 doctor's bill and a $43 hospital bill. (The hospital bill resulted from the one-year old baby's severe diarrhea attack which, upon information and belief, was caused by undernutrition.) The family, also, has periodic expenditures for clothing and school supplies.

Because of their extreme poverty, the family has often been unable to pay the foodstamp charge of $3. In December, 1968, as well as many months before, plaintiff Stewart did not receive any stamps at all. In February, 1969, the family bought the stamps with money loaned to it by several friends. Despite the relatively low price, the monthly charge for foodstamps is still in excess of the plaintiff's normal food expenditures, which, because of high expenses, is virtually nonexistent. Mrs. Stewart and her family regularly received commodities under the Direct Distribution Program before Leflore County switched to the Food Stamp Program, but now federal food assistance is often unobtainable.

(5) Plaintiff Edna Mae Garner resides in Greenville, Mississippi, with her 8 children. Her only regular income derives from a monthly A.F.D.C. grant of $91. In order to supplement her income, plaintiff Garner obtained work in a hotel in Greenville as a waitress, working for $.65 an hour. Due to severe physical ailments, Mrs. Garner had to discontinue her employment. Mrs. Garner has intestinal adhesions which require surgery and is also in need of a hysterectomy. Her daughter is also ill and has been in the University Hospital in Jackson for a majority of the time since February, 1968.

Out of plaintiff Garner's meager income, she must pay rather high expenses. Regular monthly expenditures include: $35 for house

rent; $18.26 (February 1969) for gas; about $6 for water; $12.85 (February 1969) for electricity; $3 for burial insurance; $14.36 for installment payments on a refrigerator; and $9.87 for installment payments on a stove. Plaintiff Garner has regular expenditures for clothing and school supplies as well. Even with these expenses, the family owes a $68 doctor bill.

Plaintiff Garner has been unable to afford the purchase price of the food stamps. Defendants charge her $26 a month for the stamps, more money than is available to her, and significantly higher than the household's normal monthly expenditures for food. Mrs. Garner has obtained the stamps by having others pay for them. Without such charity, she would continue to be unable to receive any federal food assistance.

(6) Plaintiff Lonnie Coleman resides in Greenwood, Mississippi with his wife and two children. The only income the family receives is a monthly Social Security check of $91 and an A.F.D.C. grant of $17. Out of this the family pays $5.25 per week for house rent; $8 to $12 a month for electricity; $2 a month for water; $8 to $12 a month for gas; approximately $6 monthly for medical expenses; and $1.10 for burial insurance. The family owes debts of $23.49 to the grocer; about $9 to the drug store; and about $281 to the hospital.

To obtain food stamps, the family is required to pay $20 a month. Since this is more than the family has available for food expenses, the Coleman household has been unable to get the stamps since the Summer of 1968. Even then, the only reason it could afford the stamps was because the purchase money was donated to the plaintiff. The family has been looking for charitable funds to pay for the stamps, but, since no sources of assistance have been found, they have been unable to obtain the stamps.

VIII. Description of the Harm Caused to the Members in Plaintiffs' Class

Defendants' arbitrary and unlawful administration of the Foodstamp Program has resulted in direct, immediate and irreparable

harm to scores of poor people in the State of Mississippi. By their actions many poor persons have been denied an adequate and sufficient diet, in contravention of the statutory purpose, because they cannot obtain the benefits guaranteed to them under the Foodstamp Act. For example, in many Mississippi counties the great majority of welfare recipients--the very persons for whom the program was intended--have been unable to purchase foodstamps and have therefore been excluded from any federal food assistance. Illustrative of the large percentages of public assistance recipients unable to obtain food stamps are, upon information and belief, the following counties:

Bolivar	62%
Coahoma	60.2%
Forrest	60.8%
Grenada	69%
Holmes	62.2%
Leflore	69.5%
Marion	64.6%
Oktibbeha	63.2%
Quitman	75.7%
Sunflower	58.2%
Tallahatchie	58.8%
Washington	62.4%

Indeed, defendants' administration of the Food Stamp Program has made significantly worse the living conditions of many very poor Mississippians. Prior to the implementation of the Food Stamp Program, many persons received donations of surplus commodities under the Direct Distribution Program. 7 U.S.C. §§612(c) and 1431. Since 7 U.S.C. 2013(b) of the Food Stamp Act prohibits a county from implementing both the Food Stamp and the Direct Distribution Programs, plaintiffs herein have been unable to obtain surplus commodities. Although the eligibility conditions for both programs are identical, and although the benefits under the Food Stamp Program are far

greater, the unlawfully high food stamp prices have caused a sharp reduction in participation in federal food assistance. For example, upon information and belief, in April 1966, 20,218 persons received food commodities in Washington County; in October 1968, only 8,609--less than one-half as many--received food stamps. The figures below, upon information and belief, are illustrative of the trend throughout the State:

County	Persons Receiving Commodities in April 1966	Persons Receiving Food Stamps in October 1968
Attala	6,330	3,405
Bolivar	22,488	15,503
Claiborne	3,507	1,784
Covington	3,769	1,685
Grenada	5,283	1,988
Holmes	15,128	7,149
Jackson	3,350	1,752
Jefferson Davis	5,003	2,449
Leflore	19,427	11,285
Lincoln	5,128	2,140
Marion	4,193	1,743
Monroe	6,079	3,514
Oktibbeha	6,431	2,603
Pike	6,085	2,964
Quitman	9,697	4,295
Scott	4,664	2,476
Sunflower	18,540	7,856
Tallahatchie	11,034	6,710
Warren	4,918	2,684
Yalobusha	3,737	1,709
Yazoo	9,803	5,999

Because of the stricture of 7 U.S.C. §2013(b), the drop in participation, after the above counties switched from commodities to food stamps, represents the many thousands of individuals who have lost federal food benefits over the past 2-1/2 years.

IX. Claim and Prayer for Relief

The Food Stamp Program was established by Congress in order to "raise levels of nutrition among low-income households." 7 U.S.C. §2011. The plaintiffs have been denied the opportunity to receive their statutory food entitlements due to the fact that defendants have charged them food stamp prices which are not "equivalent" and far in excess of "their normal expenditures for food," in violation of 7 U.S.C. §2016(b). Plaintiffs with no income and no normal food expenditures have been charged prices for the stamps; plaintiffs with income and normal food expenditures have been charged prices in excess of such normal food expenditures. No opportunity whatsoever is permitted to adduce evidence to show that the vital price determinations do not reflect households' "normal expenditures for food." Defendants have therefore significantly frustrated Congressional intent to alleviate hunger and malnutrition in Mississippi. Not only have defendants thereby frustrated Congressional will in general--by preventing thousands of nutritionally indigent individuals from receiving their federal food entitlements--but they have specifically violated Section 7(b) of the Food Stamp Act (7 U.S.C. §2016(b)) by not adhering to the statutory directive for establishing food stamp prices. In so doing the defendants have also violated Constitutional rights of Due Process by denying plaintiffs and their class their entitlements without permitting them to adduce evidence on the defendants' unlawful price determinations.

From this illegal action, plaintiffs and others similarly situated have suffered and continue to suffer grievous injury because they have insufficient resources to obtain an adequate diet. They are poor, hungry, and malnourished, and therefore any continuation of this illegal deprivation will result in further irreparable injury to them and their children. No previous application for the relief sought herein has been made to this or to any other court. No adequate administrative remedy or adequate remedy at law is available to plaintiffs.

WHEREFORE, PLAINTIFFS on behalf of themselves and all others similarly situated pray that this Court:

a. Assume jurisdiction in this matter;

b. Declare that the prices of food stamps in Mississippi are violative of Section 7(b) of the Food Stamp Act, 7 U.S.C. 2016(b), in that the charges prescribed by defendants are not "equivalent" but in excess of the normal expenditures for food of the plaintiffs herein and the class they represent;

c. Declare that the conclusive determination of a household's "normal expenditures for food," without permitting plaintiffs to adduce evidence contrary to such a determination, is in violation of Due Process rights guaranteed by the Fifth Amendment to the United States Constitution;

d. Issue a permanent injunction restraining defendants from charging any price for food stamps to individuals with no normal food expenditures due to no income;

e. Issue a permanent injunction restraining defendants from charging food stamp prices which are in excess of plaintiffs' normal expenditures for food;

f. Issue a permanent injunction restraining defendants from refusing to grant plaintiffs the opportunity to adduce evidence that defendants' price determinations are excessive and must therefore be properly lowered; and

g. Allow plaintiffs their costs and grant them and others similarly situated such further relief as the Court may deem just and appropriate.

Respectfully submitted,

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APPENDIX A

FOOD STAMP PROGRAM

NET INCOME BASIS OF COUPON ISSUANCE

TO EXTEND TABLES FOR ELIGIBLE HOUSEHOLDS WITH INCOME ABOVE THE MAXIMUM SHOWN AND TO PROVIDE FOR ISSUANCE TO HOUSEHOLDS OF MORE THAN EIGHT PERSONS USE THE FOLLOWING FORMULAS:

A. For households of one and two persons:

The Basis of Issuance for eligible households with income above the maximum shown on the one and two person schedules will be the same as listed at the highest income level in the appropriate schedule.

B. For households of three to eight persons:

(1) For eligible households with income above the maximum shown on the schedules add $4 to the maximum monthly purchase requirement, and $2 to the maximum semi-monthly purchase requirement for each $30 of monthly income (or portion thereof) over the maximum income shown for the last income interval on the appropriate schedule.

(2) The bonus will be the same as listed at the highest income level in the appropriate schedule.

C. For households of more than eight persons:

(1) Use the purchase requirement by income level for 8 person household up to the maximum shown. For each $30 worth of income (or portion thereof) over the maximum income shown, add $4 to the maximum monthly purchase requirement shown and $2 to the maximum semi-monthly purchase requirement.

(2) Add $4 to the appropriate monthly bonus coupons, or $2 to the appropriate semi-monthly bonus for each person in excess of 8.

Issuance No. 2

FOOD STAMP PROGRAM
NET INCOME BASIS OF COUPON ISSUANCE

MONTHLY NET INCOME	MONTHLY PURCHASE	MONTHLY BONUS	MONTHLY TOTAL	SEMI-MONTHLY PURCHASE	SEMI-MONTHLY BONUS	SEMI-MONTHLY TOTAL
ONE-PERSON HOUSEHOLD						
$ 0 - 19.99	$ .50	$15.50	$16	$ .25	$ 7.75	$ 8
20 - 29.99	2	14	16	1	7	8
30 - 39.99	6	10	16	3	5	8
40 - 49.99	8	10	18	4	5	9
50 - 59.99	10	8	18	5	4	9
60 - 69.99	14	6	20	7	3	10
70 - 89.99	16	6	22	8	3	11
90 & over	18	6	24	9	3	12
TWO-PERSON HOUSEHOLD						
$ 0 - 19.99	$ 1	$29	$30	$ 0.50	$14.50	$15
20 - 29.99	3	27	30	1.50	13.50	15
30 - 39.99	7	25	32	3.50	12.50	16
40 - 49.99	10	24	34	5	12	17
50 - 59.99	16	20	36	8	10	18
60 - 79.99	20	18	38	10	9	19
80 - 99.99	24	14	38	12	7	19
100 - 119.99	28	12	40	14	6	20
120 - 139.99	32	10	42	16	5	21
140 & Over	36	10	46	18	5	23

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FOOD STAMP PROGRAM
NET INCOME BASIS OF COUPON ISSUANCE

MONTHLY NET INCOME	MONTHLY PURCHASE	MONTHLY BONUS	MONTHLY TOTAL	SEMI-MONTHLY PURCHASE	SEMI-MONTHLY BONUS	SEMI-MONTHLY TOTAL
THREE-PERSON HOUSEHOLD						
$ 0 - 19.99	$ 1.50	$42.50	$44	$ 0.75	$21.25	$22
20 - 29.99	3	41	44	1.50	20.50	22
30 - 39.99	6	40	46	3	20	23
40 - 49.99	10	36	46	5	18	23
50 - 59.99	16	32	48	8	16	24
60 - 69.99	22	28	50	11	14	25
70 - 79.99	28	22	50	14	11	25
80 - 89.99	32	22	54	16	11	27
90 - 109.99	36	20	56	18	10	28
110 - 129.99	42	18	60	21	9	30
130 - 149.99	46	16	62	23	8	31
150 - 169.99	50	14	64	25	7	32
170 - 189.99	54	14	68	27	7	34
190 - 209.99	58	14	72	29	7	36
210 - 229.99	62	14	76	31	7	38
230 - 249.99	66	14	80	33	7	40
250 - 279.99	70	14	84	35	7	42
280 - 309.99	74	14	88	37	7	44

NOTE: To extend tables for households with incomes above the maximum shown, refer to last page of Basis of Issuance.

FOOD STAMP PROGRAM
NET INCOME BASIS OF COUPON ISSUANCE

MONTHLY NET INCOME	MONTHLY PURCHASE	MONTHLY BONUS	MONTHLY TOTAL	SEMI-MONTHLY PURCHASE	SEMI-MONTHLY BONUS	SEMI-MONTHLY TOTAL
			FOUR-PERSON HOUSEHOLD			
$ 0 - 29.99	$ 2	$56	$58	$ 1	$28	$29
30 - 39.99	8	50	58	4	25	29
40 - 49.99	12	48	60	6	24	30
50 - 59.99	18	42	60	9	21	30
60 - 69.99	24	38	62	12	19	31
70 - 79.99	30	34	64	15	17	32
80 - 89.99	36	32	68	18	16	34
90 - 109.99	40	30	70	20	15	35
110 - 129.99	44	26	70	22	13	35
130 - 149.99	48	24	72	24	12	36
150 - 169.99	52	22	74	26	11	37
170 - 189.99	56	22	78	28	11	39
190 - 209.99	60	20	80	30	10	40
210 - 229.99	64	18	82	32	9	41
230 - 249.99	68	18	86	34	9	43
250 - 279.99	72	18	90	36	9	45
280 - 309.99	76	18	94	38	9	47
310 - 339.99	80	18	98	40	9	49
340 - 369.99	84	18	102	42	9	51

NOTE: To extend tables for households with incomes above the maximum shown, refer to last page of Basis of Issuance.

FOOD STAMP PROGRAM
NET INCOME BASIS OF COUPON ISSUANCE

MONTHLY NET INCOME	MONTHLY PURCHASE	MONTHLY BONUS	MONTHLY TOTAL	SEMI-MONTHLY PURCHASE	SEMI-MONTHLY BONUS	SEMI-MONTHLY TOTAL
			FIVE-PERSON HOUSEHOLD			
$ 0 - 29.99	$ 2.50	$63.50	$66	$ 1.25	$31.75	$33
30 - 39.99	8	58	66	4	29	33
40 - 49.99	14	54	68	7	27	34
50 - 59.99	20	48	68	10	24	34
60 - 69.99	26	44	70	13	22	35
70 - 79.99	30	40	70	15	20	35
80 - 89.99	36	38	74	18	19	37
90 - 99.99	40	36	76	20	18	38
100 - 109.99	44	34	78	22	17	39
110 - 129.99	48	32	80	24	16	40
130 - 149.99	52	30	82	26	15	41
150 - 169.99	56	28	84	28	14	42
170 - 189.99	60	26	86	30	13	43
190 - 209.99	64	24	88	32	12	44
210 - 229.99	68	24	92	34	12	46
230 - 249.99	72	22	94	36	11	47
250 - 269.99	76	22	98	38	11	49
270 - 289.99	80	22	102	40	11	51
290 - 319.99	84	22	106	42	11	53
320 - 349.99	88	22	110	44	11	55
350 - 379.99	92	22	114	46	11	57
380 - 409.99	96	22	118	48	11	59

NOTE: To extend tables for households with incomes above the maximum shown, refer to last page of Basis of Issuance.

FOOD STAMP PROGRAM
NET INCOME BASIS OF COUPON ISSUANCE

MONTHLY NET INCOME	MONTHLY PURCHASE	MONTHLY BONUS	MONTHLY TOTAL	SEMI-MONTHLY PURCHASE	SEMI-MONTHLY BONUS	SEMI-MONTHLY TOTAL
SIX-PERSON HOUSEHOLD						
$ 0 - 29.99	$ 3	$71	$74	$ 1.50	$35.50	$37
30 - 39.99	8	66	74	4	33	37
40 - 49.99	14	62	76	7	31	38
50 - 59.99	20	56	76	10	28	38
60 - 69.99	26	52	78	13	26	39
70 - 79.99	32	48	80	16	24	40
80 - 89.99	38	46	84	19	23	42
90 - 99.99	42	44	86	21	22	43
100 - 109.99	46	42	88	23	21	44
110 - 119.99	50	40	90	25	20	45
120 - 129.99	52	38	90	26	19	45
130 - 149.99	56	36	92	28	18	46
150 - 169.99	60	34	94	30	17	47
170 - 189.99	64	32	96	32	16	48
190 - 209.99	68	30	98	34	15	49
210 - 229.99	72	28	100	36	14	50
230 - 249.99	76	26	102	38	13	51
250 - 269.99	80	26	106	40	13	53
270 - 289.99	84	26	110	42	13	55
290 - 319.99	88	26	114	44	13	57
320 - 349.99	92	26	118	46	13	59
350 - 379.99	96	26	122	48	13	61
380 - 409.99	100	26	126	50	13	63
410 - 439.99	104	26	130	52	13	65

NOTE: To extend tables for households with incomes above the maximum shown, refer to last page of Basis of Issuance.

FOOD STAMP PROGRAM

NET INCOME BASIS OF COUPON ISSUANCE

MONTHLY NET INCOME	MONTHLY PURCHASE	MONTHLY BONUS	MONTHLY TOTAL	SEMI-MONTHLY PURCHASE	SEMI-MONTHLY BONUS	SEMI-MONTHLY TOTAL
SEVEN-PERSON HOUSEHOLD						
$ 0 - 29.99	$ 3	$77	$80	$ 1.50	$38.50	$40
30 - 39.99	8	72	80	4	36	40
40 - 49.99	14	68	82	7	34	41
50 - 59.99	20	62	82	10	31	41
60 - 69.99	26	58	84	13	29	42
70 - 79.99	32	54	86	16	27	43
80 - 89.99	38	52	90	19	26	45
90 - 99.99	42	50	92	21	25	46
100 - 109.99	46	48	94	23	24	47
110 - 119.99	50	46	96	25	23	48
120 - 129.99	54	44	98	27	22	49
130 - 139.99	58	42	100	29	21	50
140 - 149.99	60	40	100	30	20	50
150 - 169.99	64	38	102	32	19	51
170 - 189.99	68	36	104	34	18	52
190 - 209.99	72	34	106	36	17	53
210 - 229.99	76	32	108	38	16	54
230 - 249.99	80	30	110	40	15	55
250 - 269.99	84	30	114	42	15	57
270 - 289.99	88	30	118	44	15	59
290 - 309.99	92	30	122	46	15	61
310 - 329.99	96	30	126	48	15	63
330 - 349.99	100	30	130	50	15	65
350 - 379.99	104	30	134	52	15	67
380 - 409.99	108	30	138	54	15	69
410 - 439.99	112	30	142	56	15	71
440 - 469.99	116	30	146	58	15	73

NOTE: To extend tables for households with incomes above the maximum shown, refer to last page of Basis of Issuance.

3120. Interpretation

The purpose of assistance payments under the Social Security Act is to supplement the income and resources of an individual when these are inadequate to provide him an opportunity to secure for himself the State's defined standard of economic security for people in need. Under the act, State agencies have the responsibility for seeing that assistance payments are made in such amounts and in such a way as to make it possible for eligible individuals to function as responsible members of the community.

Need is the eligibility factor common to the assistance titles. A needy individual, under titles I, IV, X, XIV, and XVI, is one who does not have income and resources sufficient to assure economic security, the standard of which must be defined by each State. The act recognizes that the standard so defined depends upon the conditions existing in each State.

Under titles I, IV, X, XIV, and XVI, the condition of need must be found to exist with respect to each individual. The public assistance provisions are interpreted to permit consideration of the fact that the presence in the home of needy members of the applicant's family and other needy persons with whom he lives may be essential to his well-being and may affect his need.

A State assistance program must have a standard which is used to identify needy individuals and to establish the amount of assistance to which an individual is entitled. Since the measure of assistance is in money terms, it follows that the facts must be established as to the money amounts necessary to secure the State's defined standard. "Money amount" means an amount for each consumption item or for a group of items included in the standard. The money amount may vary with difference in cost objectively determined to exist within the State.

The act requires that all income and resources of an individual applying for assistance to be taken into consideration. 1/ This

1/ Except as required or permitted to be disregarded or set aside under the various titles of the Social Security Act or other Federal law.

3120. Interpretation (Continued)

necessitates a survey with the individual of the kinds and amounts of income and resources he has or believes he can secure for himself. Provision must be made that in arriving at the amount of assistance needed, the State will compare all income and resources found to be available to the individual for his use in meeting his current needs with the money amount arrived at through the application of the State-wide standard. The State has the responsibility for establishing policies with reference to potential sources of income that can be developed to a state of availability.

The income and resources clause of the respective titles is so interpreted as to support the objective of economic security for needy individuals. Such individuals are not required to be completely destitute in order to be eligible for assistance. "Consideration" of income and resources is interpreted, therefore, as permitting State-wide policies that provide for the following:

1. Definitions of the amounts of real and personal property that can be retained to meet current and future identifiable needs while assistance is received on a continuing basis; provided, that such definitions will assure that only needy individuals are eligible. The acceptable outer limits on real and personal property provisions are:

   The Home: No monetary limit required; no recovery provision required.

   Personal and Household Effects and Automobile: No monetary limit required.

   Income-Producing Property: No monetary limit required, but required that all net income be accounted for under State's policies governing income and resources or the disregard thereof. The policies may allow reasonable proportions of income from businesses or farms to be used to increase capital assets, so that income may be increased.

   Reserves: Two thousand dollars limit for individual recipient in addition to property described above.

3120. Interpretation (Continued)

2. Allocation of the individual's income as necessary for the support of his dependents not to exceed the total amount of their needs as determined by a State-wide standard;

3. Complementary program relationships that assure that no duplication exists in assistance granted by other agencies and organizations and that of the public assistance agency. Within this interpretation, State public assistance agencies may establish policy under which aid from other agencies and organizations will not be deducted in determining the amount of assistance needed from the public assistance agency. When a State adopts such policy, the fact that no duplication occurs in such cases must be assured by provision that such aid will be considered in relation to:

(a) The different purpose for which the other agency grants aid, such as vocational rehabilitation;

(b) The provision of goods and services that are not included in the State-wide standard of the public assistance agency, e.g., a private agency might provide money for special training for a child or for medical care when the public assistance agency does not carry this responsibility; or

(c) The fact that public assistance funds are insufficient to meet the total amount of money determined to be needed in accordance with the State-wide standard. In such instances, grants by other agencies in an amount sufficient to make it possible for the individual to have the amount of money determined to be needed, in accordance with the public assistance agency standard, will not constitute duplication.

Availability of Income and Resources

In some States, policy has been in effect whereby income and resources, not actually available, have been assumed to be available to applicants and recipients, and have been considered so as to reduce the amount of assistance and thus the total amount actually available for meeting the essentials of living. To meet this inequity, a requirement is being added, to become effective July 1, 1967, for all new cases, and for all other cases as they come up for redetermination of eligibility thereafter.

3120. Interpretation (continued)

Availability of Income and Resources (continued)

Under this requirement, a State must differentiate between resources that can be counted on because they are available for current use on a regular basis and those found not to be available for the individual's use in meeting subsistence needs as defined in the State's standard. This means taking into consideration, in determining need and amount of payment, all current income from all sources, such as earnings, OASDI monthly benefits, contributions, etc., actually available to meet the individual's needs on a regular basis (except as required or permitted to be disregarded or set aside under the various titles of the Social Security Act or other Federal law) and in contrast, omitting from consideration in determining need and amount of payment any income or resources merely assumed to be possessed by the individual.

Thus, income must not be considered where it is not, in fact, currently available to the needy individual; e.g., support payments ordered by the court but which are not, in fact, made; contributions which relatives have been determined able to make but which are not, in fact, made; and income from employment assumed to be available in the community when, in fact, the individual is not working.

For cases in which income or resources are initially available, but are then discontinued, e.g., cases in which a payment under a court order, or contributions, continue for several months and then cease, assistance payments will need to be adjusted promptly to reflect this change in circumstances.

Assistance payments must be based on need in the light of currently available income and resources. Current payments cannot be reduced because of prior overpayments, if the recipient no longer has the income available, which occasioned the overpayment. Examples: Unreported income several months ago which is no longer available as well as agency overpayments.

3121. Home Produce

Any home produce from garden, livestock and poultry utilized by the recipient and his household for their consumption (as distinguished from such produce sold or exchanged) represents resourcefulness on the part of a recipient in bettering his situation, rather than a resource to be considered in the assistance plan. Reviews have shown serious underpayments to result from inability of workers to evaluate objectively such produce. To remedy this situation, home produce for family consumption is to be considered an incentive to recipients toward self-help and may not be considered a resource in the determination of need and amount of payment.

3131. Requirements for State Plans

1. The State plan must include the State-wide standard and the policies to be applied uniformly throughout the State in the determination of need and the amount of assistance. In order that the standard and the policies may be uniformly applied, and thus provide a basis for objective and equitable determinations throughout the State, it is essential that the instructions be clear and definite. Effective July 1, 1966, the State plan must provide one of the three methods described in the Bureau publication entitled, Simplified Methods for Determining Needs (see State Letter No. 712), or a comparable method approved by the Bureau. Such a method must be applicable to each of the State's plans under title I, IV, X, XIV, and XVI.

2. The comparable method used must provide a combined standard for the cost of all basic consumption items with the permissible exception of shelter costs as a separate item, or of special needs as limited by item 3, below, by family size as described in the publication. Since a method without breaks by age groups is preferable, any standard including one or more age breaks cannot be approved unless the State submits special justification.

3. If provision is made for special needs in State's plans under titles I, IV, X, XIV, and XVI, the circumstances so recognized must be such as to necessitate expenditures not necessary for all individuals. The State plan must contain a description of the specified circumstances affecting the need of individuals which the State agency will recognize by including additional consumption items for all individuals in those circumstances. A differentiation can be made for different living arrangements, such as costs for room and board, restaurant meals, or nursing home care.

4. If a State chooses to establish the need of the individual on a basis that recognizes as essential to him the presence in the home of other needy persons, the plan must include the State's policy as to the persons whose need will be comprehended in the individual's need. The State's instructions must set forth clearly that the decision as to whether any persons within the State's definition are essential to his well-being shall rest with the recipient.

3131. Requirements for State Plans (Continued)

5. The plan must include the policies which will assure that all income and resources of an individual claiming assistance will be considered in determining that he is needy. 1/ The plan must provide that all income and all resources regularly available for his use will be evaluated and taken into account by comparing them with the State's standard of assistance to determine the amount of assistance needed; except that, if a State chooses to provide for the conservation of all or any portion of an AFDC family's earned or other income for future identifiable needs of a child, in accordance with the last paragraph of item 2 of IV-3140, effective July 1, 1963, a State plan for AFDC must provide that the amount of income which may be conserved shall be reasonable in amount as related to the purpose for which it is being held. Such provisions must be consistent with each other and with the framework established for the program by the State law. (See IV-4260 and IV-4300, item B, plan for each child.)

6. Effective January 1, 1965, for all new cases, and for all other cases as they come up for redetermination of eligibility thereafter, the State plan must provide that any home produce of an applicant or recipient, utilized by him and his household for their own consumption, shall not be considered in determining need and the amount of payment.

7. Effective July 1, 1967, for all new cases, and for all other cases as they come up for redetermination of eligibility thereafter, the State plan must provide that only income and resources that are, in fact, available to an applicant or recipient for current use on a regular basis will be taken into consideration in determining need and the amount of payment.

8. The plan must provide that the payment is based on the determination of the amount of assistance needed. If assistance funds are not sufficient or if maximums preclude the agency from making payments in accordance with the amount of assistance determined to be needed, the plan must include a method, Statewide in applicability, of adjusting individual payments that will be in effect uniformly in all localities.

1/ Except as required or permitted to be disregarded or set aside under the various titles of the Social Security Act or other Federal law.

3131. Requirements for State Plans (Continued)

9. Effective November 1, 1965, the State plan must provide that loans made under conditions that preclude their use for meeting current living costs and that are held and used in accordance with such conditions shall not be considered available for such needs and that the sums so held and used shall not be taken into account in determining the assistance payment.

10. Effective July 1, 1967, in a State which holds relatives responsible for the support of applicants for or recipients of assistance, the State plan must provide an income scale as a method to determine whether responsible relatives have sufficient income to warrant expectation that they can contribute to the support of applicants or recipients. Such income scale must exceed a minimum subsistence level of living, and must at least represent a minimum level of adequacy which takes account of the needs and other obligations of the relative.

    Effective July 1, 1967, the State plan must also provide that no request will be made for contributions to applicants for or recipients of assistance from relatives whose net cash income is below such scale, unless such applicant for or recipient of assistance is such relative's spouse or minor child who is living in the home with the relative.

11. Effective July 1, 1967, the State plan must assure that, when support payments by absent parents have been ordered by a court, a regular amount of income is available monthly to meet the determined needs of the mother and children whether or not the support payments are received regularly, and that the agency will not delay or reduce public assistance payments on the basis of assumed support which is not actually available.

12. Effective July 1, 1967, the State plan must provide that no inquiry will be made of the amount of income from earnings of a child under 14 years of age for the purposes of determining eligibility.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
----------x

In the Matter of the Application of

PETRA SUAREZ,

Petitioner,

For a Judgment under Article 78 of the Civil Practice Law and Rules Annulling the Determination of the New York City Department of Social Services,

-against-

GEORGE K. WYMAN, as Commissioner of the Department of Social Services of the State of New York,

Respondent.
----------x

VERIFIED AMENDED PETITION pursuant to Article 78 CPLR

Index No. 18944/68

Petitioner, by her attorney HAROLD J. ROTHWAX, MARTIN A. SCHWARTZ, of Counsel, complaining of the respondent, respectfully alleges:

1. Petitioner, PETRA SUAREZ, resides at 38 Rutgers Street, New York, New York, and lives with and cares for her three minor children, NICHOLAS, age 17; ROSA, age 12; and EVELYN, age 10.

2. Respondent, Commissioner GEORGE K. WYMAN, is the Chief Executive and Administrative Officer of the New York State Department of Social Serviceswhich is the authority responsible for the administration of the public welfare system of the State of New York, and for the supervision of local welfare departments.

3. Petitioner had been for some time prior to May 14, 1968 receiving a supplementary grant from the Department of Social Services of the City of New York, which amount was $51.00 semi-monthly.

4. That on May 14, 1968, petitioner received a Notice of Discontinuance of Grant, informing her that, effective immediately, she was no longer eligible for welfare assistance. A copy of said Notice of Discontinuance is annexed to this amended petition as Exhibit .

5. That on information and belief this termination notice was sent because she had remarried April 13, 1968, and because the Department of Social Services erroneously and without investigation, assumed that her husband could support her children.

6. That such discontinuance occurred without the prior notice of intention to discontinue and without affording petitioner the opportunity to demonstrate why her assistance should not be discontinued as required by 18 N.Y.C.R.R. §351.26. This is confirmed by the Decision After Fair Hearing, Page 2, annexed as Exhibit .

7. That such discontinuance was therefore in violation of 18 N.Y.C.R.R. §351(b), a regulation promulgated by the Department of Social Services which mandates that the New York City Department of Social Services give seven days notice of proposed discontinuance or suspension of public assistance together with the reasons for the intended action and afford an opportunity for the recipient to submit written evidence to demonstrate why public assistance should not be discontinued. A copy of 18 N.Y.C.R.R. §351.26 is annexed to this verified petition as Exhibit .

8. That such discontinuance denied petitioner her right to the due process of law as required by the Fourteenth Amendment to the Constitution of the United States.

9. That on the 24th day of May, 1968, petitioner brought a special proceeding pursuant to Article 78 of the CPLR at New York Supreme Court, New York County, Special Term, Part I, in the nature of mandamus to compel the New York City Department of Social Services to restore petitioner's public assistance grant and provide petitioner with seven days notice and an opportunity to demonstrate why public assistance should not be discontinued in accordance with 18 N.Y.C.R.R. §351.26(b). Matter of Suarez, Index No. 08548/68.

10. That said Article 78 proceeding was dismissed for petitioner's failure to exhaust the administrative remedy of a subsequent hearing pursuant to Board of Social Welfare Rule 84.3(a)(1) and that no appeal from this order has been taken. A copy of this order of dismissal is annexed as Exhibit .

11. That on June 11, 1968, petitioner made a written request for an administrative "fair hearing" pursuant to Board of Social Welfare Rule 84.3(a)(1) and that such request carefully specified that it was intanded solely to contest the respondent's failure to comply with 18 N.Y.C.R.R. §351.26 (b), and that the request further pointed out that the hearing was not being requested to contest the merits of eligibility. A copy of the written request for such hearing is annexed hereto as Exhibit .

12. That on July 8, 1968, a hearing was held at the office of the New York State Department of Social Services located in New York County.

13. That, despite the specific request that there only be considered the question of the respondent's failure to comply with 18 N.Y.C.R.R. §351.26(b) as averred in paragraph 11, and despite the statement made by petitioner's representative at the fair hearing that the sole issue is whether the discontinuance of petitioner's public assistance was in accordance with 18 N.Y.C.R.R. §351.26(b), (Transcript of Fair Hearing, page 2) the hearing was converted into a hearing on the merits to determine petitioner's eligibility for public assistance. A copy of the transcript of Fair Hearing, is annexed as Exhibit .

14. That the question of petitioner's eligibility for public assistance involved technical, complex and substantial questions of law, namely, the obligation of a stepfather for the support of his stepchildren and the availability for family use of certain funds allegedly earned by petitioner's husband,

that is, the propriety of the respondent considering certain funds available for family use which are not in fact available.

15. That because the hearing of July 8, 1968 was requested by petitioner solely to contest respondent's failure to comply with 18 N.Y.C.R.R. §351.26, petitioner was not prepared to argue these substantial questions of law.

16. That it was petitioner's contention that certain funds allegedly earned by petitioner's husband, while considered by respondent as available to petitioner and her family, were not in fact available as demonstrated by the affidavit of Lillian Melendez, who interviewed the husband of petitioner, and which is annexed as Exhibit .

17. That because of the failure of the New York City Department of Social Services to comply with 18 N.Y.C.R.R. § §351.26, and because of the action of the respondent in upholding such conduct, petitioner has had no opportunity to adequately present her claims, set forth in paragraphs 14 and 16 above, to respondent, and confirmed by the affidavit of petitioner's attorney, Exhibit .

18. That had the New York City Department of Social Services complied with 18 N.Y.C.R.R. §351.26(b), petitioner would have been afforded an opportunity to demonstrate her continued eligibility for public assistance.

19. That inasmuch as the special proceeding brought by petitioner pursuant to Article 78 of the CPLR, prior to the time petitioner proceeded with the "fair hearing", was dismissed for failure to exhaust this administrative remedy as set forth in paragraphs 9 and 10 above, this instant proceeding is the only possible means whereby petitioner can obtain judicial enforcement appelling respondent to comply with its own rules and regulations and with the mandates of the United States Constitution.

20. Annexed hereto as Exhibit is a copy of the decision by respondent of the hearing held on July 8, 1968 which:

(1) Affirmed the action of the New York City Department of Social Services.

(2) Found as a fact that the New York City Department of Social Services failed to provide a prior hearing and

(3) Which condoned this action on the ground that this failure was not wilful.

21. That the finding that the failure to aford petitioner a "prior hearing" pursuant to §351.26(b) was excusable, constitutes an error of law.

W H E R E F O R E, petitioner respectfully prays:

1. That the determination of the respondent as Commissioner of the New York State Department of Social Services approving the action of the New York City Department of Social Services terminating petitioner's public assistance without seven days prior notice of intention to discontinue and without affording petitioner an opportunity to demonstrate why her assistance should not be discontinued as provided for by 18 N.Y.C.R.R. §351.26(b) and jby the Fourteenth Amendment to the jUnited States Constitution be annulled pursuant to Section 7803(1) of the Civil Practice Law and Rules for failure to perform a duty enjoined upon it by law.

2. For an order mandating respondent to require the New York City Department of Social Services: 1) to restore petitioner to the public assistance role as of May 14, 1968; and 2) to pay to petitioner all grants of public assistance which she would have received had her public assistance not been terminated on that date.

3. For such other and further relief which this Court may deem just and proper.

Respectfully submitted,

HAROLD J. ROTHWAX, Esq.
MARTIN A. SCHWARTZ, of Counsel
DAVID A. DIAMOND, of Counsel
MFY Legal Services, Inc.
339 E. 3rd St., N.Y.C. 10009
777-5250
~~[illegible]~~ 777-5250

DATED: New York, N. Y.
February 28, 1969

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

PETRA SUAREZ, being duly sworn, deposes and says that she is the petitioner in the within action, that she has read the foregoing amended petition and knows the contents thereof, that the same is true to her own knowledge, except as to matters therein stated to be alleged on information and belief, and that as to those matters she believes to be true.

PETRA SUAREZ

Sworn to before me this

day of , 1969.

Please Return Original Order

UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

GEORGE E. JALBERT, et al., Petitioners v. DISTRICT OF COLUMBIA, Respondent	No. 20,324

BRIEF IN SUPPORT OF PETITION FOR ALLOWANCE OF AN APPEAL FROM THE DISTRICT OF COLUMBIA COURT OF APPEALS

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QUESTIONS PRESENTED

Petitioners were part of a group of 600-800 people gathered on the United States Capitol Grounds to protest American policies in Vietnam. They failed to move on when ordered to do so by the police, and -- with some 300 other demonstrators -- were arrested. It was stipulated by the parties and found by the trial court that the behavior of the demonstrators was "orderly with the exception of the failure to obey the order to move," but the court found each of the petitioners guilty of a breach of the peace (22 D.C. Code § 1121). In these circumstances the following primary questions are presented:

1. May failure to obey a police order to disperse a concededly orderly political demonstration be punished as a crime under 22 D.C. Code § 1121? The court below answered "yes"; petitioners contend the answer should be "no".

2. Does 22 D.C. Code § 1121, as construed to apply even where no actual or impending breach of the peace has been shown, violate the First Amendment? The court below answered "no", petitioners contend the answer should be "yes".

3. Does 40 U.S.C. § 193(g) (9 D.C. Code § 124), which prohibits parades or assemblies on the United States Capitol grounds, violate the First Amendment on its face or -- where there is evidence of selective enforcement -- as applied? The court below did not squarely face this question; petitioners believe the answer should be "yes".

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Amendment I

> Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances

Amendment V

> No person shall . . . be deprived of life, liberty, or property, without due process of law; . . .

District of Columbia Code

Section 9-124 (40 U.S.C. § 193g)

> It is forbidden to parade, stand, or move in processions or assemblages in said United States Capitol Grounds, or to display therein any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement, except as hereinafter provided in sections 9-128 and 9-129.

Section 22-1121

> Whoever, with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby --
>
> * * *
>
> (2) congregates with others on a public street and refuses to move on when ordered by the police;
>
> * * *

STATEMENT OF THE CASE

1. Facts.

In the late morning and early afternoon of August 9, 1965, while Congress was in session (R. 111), the petitioners, with 600-800 others (R. 4), participated in an assembly in Washington, D.C., to protest American policies in Vietnam. The group planned to convene an "Assembly of Unrepresented People" at the Capitol steps, read a "Declaration of Peace," listen to speakers, and then disperse. (R. 369-70, 397-98.)

Accordingly, the group formed on the Mall and paraded toward the Capitol. (R. 248.) As the group crossed Third Street a spokesman informed Deputy Chief Howard Covell (Metropolitan Police), in command of the police on the scene, that the group wished to go as far as the Capitol steps and there read some declarations and hold a meeting. (R. 67.)

The police announced over a "bullhorn," as the paraders crossed Third Street and again at Second Street, that they would be arrested if they crossed First Street. (R. 248.) Many of the paraders crossed First Street and proceeded on for a short distance until they were stopped by a line of policemen, sat down, and began the assembly.*/ (R. 4, 6, 34.) For

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*/ At one point, (R. 4) Deputy Chief Covell said the group proceeded about a hundred yards past First Street. At another point (R. 60) he showed where the group was gathered by placing an ink mark on a copy of the official map of the Capitol Grounds. The marked map is at R. 552. (This map defines the Capitol Grounds. 9 D.C. Code § 118, also codified at 40 U.S.C. 193a.)

perhaps an hour (R. 252-53, 299, 379), there followed speeches consisting of excerpts from the "Declaration of Peace"*/ and otherwise relating to American involvement in Vietnam, in addition to singing, clapping, and waving of banners and placards. (R. 6, 54.) After another warning that the demonstrators would be arrested if they did not move back across First Street, some 300 demonstrators, including petitioners, were arrested. (R. 5.) The parties stipulated, and the trial court expressly found, that the demonstrators were "orderly with the exception of the failure to obey the order to move." (R. 88-89.)

With respect to the conduct of the petitioners, Jalbert was arrested while addressing the demonstrators concerning his views on United States involvement in the Vietnam conflict (R. 269, 367); Fusco was arrested while speaking to the demonstrators, telling them not to be distracted by the arrests from the main point of the demonstration (R. 249, 278); Broucharde was arrested while sitting and talking with a Scripps-Howard reporter (R. 130-140, 198-208); Brummal

---

*/ The trial court would not admit the Declaration into evidence. (R. 392) However, Senator Wayne Morse inserted the Declaration into the Congressional Record on the day after the demonstration, see 111 Cong. Rec. 19113-19114 (daily ed., August 10, 1965) and, as the trial court observed (R. 390), judicial notice may be taken of the contents of the Congressional Record.

(R. 132, 141, 145-146) and Flenner (R. 143, 396) were arrested while seated among the demonstrators.

2. Proceedings Below.

Each of the petitioners was charged with violating 22 D.C. Code § 1107 (disorderly conduct), and 22 D.C. Code § 1121 (breach of the peace) upon informations filed by the Corporation Counsel. The District of Columbia Court of General Sessions, Beard, J., found all petitioners guilty on the §22-1121 count; only petitioners Flenner and Jalbert were found guilty on the §22-1107 count. On appeal, the District of Columbia Court of Appeals reversed the two convictions under §22-1107 on the ground that there was no evidence of loud and boisterous conduct in the record, but affirmed all the convictions under §22-1121. */

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*/ The D.C. Court of Appeals held that the sentences imposed under § 1121 were excessive and remanded for resentencing. That the cases were remanded for resentencing does not limit this Court's jurisdiction. Unlike 28 U.S.C. § 1291, giving courts of appeals jurisdiction over final judgments of district courts, 11 D.C. Code § 321 gives this Court jurisdiction over all judgments of the District of Columbia Court of Appeals. Even where finality is required, as in 28 U.S.C. § 1257(3), an appellate judgment upholding a conviction but remanding for resentencing is deemed final. Brady v. Maryland, 373 U.S. 83, 85 n.1 (1963).

SUMMARY OF REASONS FOR ALLOWING THE APPEAL

This Court has never decided how far group political assemblies in this jurisdiction are restricted by local or federal statute, or may be so restricted consistently with the First Amendment. In the absence of such a decision, the only construction of First Amendment rights has been the one adopted in 1962 by the District of Columbia Court of Appeals and followed by that court in this case -- a restrictive construction which violates the First Amendment and is flatly contrary to Edwards v. South Carolina, 372 U.S. 229 (1963), and Cox v. Louisiana, 379 U.S. 536 (1965).

In this case, petitioners, while engaged in protected First Amendment activity -- assembling peaceably to petition Congress for redress of grievances -- were arrested and convicted of a breach of the peace, despite the absence of any showing of an actual or impending breach of the peace, and despite the parties' stipulation and the trial court's finding that the demonstration was "orderly with the exception of the failure to obey the order to move."

In affirming the convictions, the District of Columbia Court of Appeals adhered to a construction of the statute which completely dispenses with the need to show an actual or impending breach of the peace in order to gain a conviction. As so construed the statute violates the First Amendment. Edwards v. South Carolina, supra; Cox v. Louisiana, supra.

The District of Columbia Court of Appeals sought to distinguish these cases by saying petitioners had no right to be on the Capitol Grounds (because of a statute prohibiting parades or assemblies on the Capitol Grounds). But affirmance of a criminal conviction may not rest upon an appellate "finding" of a "violation" of a statute under which petitioners were not charged. Further, the decision below would permit use of the breach of the peace statute to prevent a constitutional attack on the Capitol Grounds statute -- a statute which has never been construed by this Court, and which petitioners contend is unconstitutional, both on its face as as applied.

The decision below thus flies in the face of recent Supreme Court decisions and jeopardizes free political expression in the city where preservation of this right is most crucial. This case thus affects not only the five petitioners, but all others who may ever wish to -- or be deterred from -- expressing their political views in the nation's capital.

REASONS FOR ALLOWING THE APPEAL

As the nation's capital, Washington, D.C. is a focal point for political assemblies.*/ Political demonstrations in this city have become almost daily occurrences: issues like civil rights, home rule, Vietnam, Medicare, right to work laws, etc., have all produced demonstrations in the form of rallies, parades, block parties, picketing, peace vigils, prayer meetings, hunger strikes, and tent cities in our parks.

Despite the obvious importance to citizens and law enforcement officers of having the legitimate boundaries of this political expression clearly defined the crucial questions in this case have not received the attention of the highest court of the jurisdiction. As a result, political expression in the nation's capital has been subject to unwarranted restriction.

Only last year the Supreme Court of the United States reversed a breach of the peace conviction where conduct of precisely the sort shown here was prosecuted under a statute essentially identical to 22 D.C. Code § 1121.**/ In Cox v.

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*/ Solely to participate in the political assembly involved in this case, the petitioners came from their homes in New York (Broucharde), Mississippi (Fusco), California (Brummal), Ohio (Jalbert), and Illinois (Flenner).

**/ 22 D.C. Code § 1121: "Whoever, with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby . . . congregates with others on a public street and refuses to move on when ordered by the police . . . ."

La. Rev. Stat. § 14:103.1: "Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby . . . crowds or congregates with others . . . in or upon . . . a public street or public highway, or upon a public sidewalk, or any other public place or building . . . and who fails or refuses to disperse and move on . . . when ordered so to do by any law enforcement officer . . . ."

Louisiana, 379 U.S. 536 (1965), 2000 demonstrators gathered across from the Baton Rouge courthouse carrying signs of protest, singing, praying, applauding and cheering, then listened to a speech characterized by local officials as inflammatory. The Supreme Court said flatly:

> "We hold that Louisiana may not constitutionally punish appellant under this statute for engaging in the type of conduct which this record reveals, and also that the statute as authoritatively construed by the Louisiana Supreme Court is unconstitutionally broad in scope." [379 U.S. at 545.]

Compare Edwards v. South Carolina, 372 U.S. 229, where approximately 200 people gathered on the State Capitol grounds to speak, sing, clap and stamp their feet in protest against State legislative policies. The Supreme Court reversed their breach of the peace convictions, holding that "the circumstances in this case reflect an exercise of these basic [First Amendment] constitutional rights in their most pristine and classic form." 372 U.S. at 235.

In this case too the petitioners, and the others with whom they gathered, were exercising basic constitutional rights "in their most pristine and classic form." They gathered to express their political views to the Congress of the United States, and did so by making speeches, singing, clapping, cheering, and other means appropriate to an orderly outdoor meeting.

The District of Columbia Court of Appeals held that a conviction may be obtained under 22 D.C. Code § 1121 even without proof of an actual or impending breach of the peace. */ But this construction, far from validating the convictions, renders them totally unconstitutional. For this is an authoritative construction of the statute which is far broader than that condemned by the Supreme Court in Cox. Thus the statute is unconstitutional because "it sweeps within its broad scope activities that are constitutionally protected free speech and assembly." 379 U.S. at 552.

The District of Columbia Court of Appeals sought to avoid the vice of using a broad prohibitory statute such as 22 D.C. Code § 1121 to curb protected activity by referring to 40 U.S. Code § 193(g). Notwithstanding the fact that the petitioners were not charged under this statute, the District of Columbia Court of Appeals "found" they had "violated" it, and thus sought to distinguish the present case from Edwards, Cox, and other applicable precedents:

> "Here the demonstrators were at a place where they had no right to be, whereas in other cases, the demonstrators were in permitted areas." [Feeley v. District of Columbia, slip opinion p. 4 (D.C.C.A. June 17, 1966), footnote omitted.]

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*/ In the instant case, the District of Columbia Court of Appeals rejected the arguments made here by referring to its rejection of those arguments in Feeley v. District of Columbia, ___A.2d___ (No. 3863, June 17, 1966), which involved breach of peace convictions arising out of the same demonstration as in this case. Discussion in this and the following paragraph of the District of Columbia Court of Appeals' rationale for its decision in this case refers to its discussion of the same issues in the Feeley case, where the court adhered to the reasoning of Scott v. District of Columbia, 184 A.2d 849 (D.C. 1962) -- a case decided before Edwards and Cox.

Such use of a statute not charged violates due process. Bouie v. City of Columbia, 378 U.S. 347 (1964); Cox v. Louisiana, 379 U.S. at 556 n.15; DeJonge v. Oregon, 299 U.S. 353 (1937); Cole v. Arkansas, 333 U.S. 196 (1948).

More significantly , if the breach of the peace statute is allowed to serve as a surrogate for the Capitol Grounds statute, the latter statute -- which has never before been construed by any Court -- might be rendered immune from constitutional attack.*/ Allowing such insulation of this statute would be particularly grievous in view of the serious doubts of its constitutionality, both on its face and as applied.

On its face, it severely restricts the right to petition the legislature for redress of grievances, going far beyond what is necessary to prevent undue interference with the work of Congress.**/

As applied, the statute is unconstitutional because uncontradicted testimony in the record that prior demonstrations have been permitted on the Capitol Grounds (R. 80-85, 340-44) establishes a selective enforcement policy:

> "It is clearly unconstitutional to enable a public official to determine which expressions of view will be permitted and which will not or to engage in invidious discrimination among persons or groups . . . by selective enforcement of an extremely broad prohibitory statute." [Cox v. Louisiana, 379 U.S. at 557.]

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*/ As the trial court sought to do here. R. 9, 53-56, 347-50.

**/ The official map of the Capitol Grounds, R. 552, shows they extend many blocks beyond the Capitol and legislative office buildings. Furthermore, the statute applies at all times, not simply when Congress is in session or legislative work is in progress. Compare Edwards v. South Carolina, 372 U.S. at 236.

CONCLUSION

Because this case involves constitutional questions which are certain to arise with increasing frequency in the courts of the District of Columbia, because the determination of these questions below is contrary to decisions of the Supreme Court of the United States, and because the decision below construes a criminal statute of the District of Columbia not heretofore construed by this Court, the petitioners pray this Court to allow an appeal from the judgment of the District of Columbia Court of Appeals.

Respectfully submitted,

_____

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I certify that I have served a copy of this Brief in Support of Petition for Allowance of an Appeal on Respondent by mailing a copy, postage prepaid, to the Corporation Counsel of the District of Columbia, Washington, D.C.

_____

Armand Derfner

August 24, 1966

...EPH LEE et al VS. ALFRED H. MAYER CO. et al MISSOURI 1967
...MINATION AGAINST JEWS and NEGROES)

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IN THE

Supreme Court of the United States

October Term, 1967

No. 645

JOSEPH LEE JONES and BARBARA JO JONES,
Petitioners,

v.

ALFRED H. MAYER COMPANY, a corporation, ALFRED REALTY COMPANY, a corporation, PADDOCK COUNTRY CLUB, INC., a corporation, ALFRED H. MAYER, an individual, and an officer of the above corporations,
Respondents.

BRIEF OF NATIONAL JEWISH ORGANIZATIONS AND REPRESENTATIVE LOCAL JEWISH COUNCILS

(Affiliated with the National Community Relations Advisory Council)

AMICI CURIAE

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Respondents.

BRIEF OF NATIONAL JEWISH ORGANIZATIONS AND REPRESENTATIVE LOCAL JEWISH COUNCILS

(Affiliated with the National Community Relations Advisory Council)

AMICI CURIAE

Interest of the *Amici*

This brief is submitted on behalf of the following national Jewish organizations:

American Jewish Committee
Jewish Labor Committee
Jewish War Veterans of the U. S. A.
National Council of Jewish Women
Union of American Hebrew Congregations
Union of Orthodox Jewish Congregations of America
United Synagogue of America

and 81 representative local Jewish councils, covering the major cities in the United States.*

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* Local, State and County Agencies: Jewish Welfare Fund of Akron; Albany Jewish Community Council; Atlanta Jewish Community Council; Federation of Jewish Agencies of Atlantic County, N.J.; Baltimore Jewish Council; Jewish Community Council of Birmingham; Jewish Community Council of Metropolitan Boston; Jewish Community Council, Bridgeport, Conn.; Brooklyn Jewish Community Council; Jewish Federation of Broome County, N.Y.; Community Relations Council of Camden County, N.J.; Jewish Community Federation, Canton, Ohio; Jewish Community Relations Committee of Charleston, S.C.; Cincinnati Jewish Community Relations Committee; Jewish Community Federation, Cleveland, Ohio; United Jewish Fund and Council, Columbus, Ohio; Connecticut Jewish Community Relations Council; Jewish Community Council of Dayton; Jewish Federation of Delaware; Jewish Community Council of Metropolitan Detroit; Eastern Union County, N.J., Jewish Community Council; Jewish Community Council of Easton and Vicinity; Jewish Community Welfare Council, Erie, Pa.; Jewish Community Council of Essex County, New Jersey; Jewish Community Council of Flint, Mich.; Jewish Federation of Fort Worth, Tex.; Community Relations Committee of the Hartford (Conn.) Jewish Federation; Jewish Community Council of Metropolitan Houston (Tex.); Indiana Jewish Community Relations Council; Indianapolis Jewish Community Relations Council; Jewish Community Council, Jacksonville, Florida; Community Relations Bureau of the Jewish Federation and Council of Greater Kansas City; Kingston, N.Y., Jewish Community Council; Jewish Community Council of Long Beach, Cal.; Community Relations Committee of the Jewish Federation Council of Greater Los Angeles; Conference of Jewish Organizations of Louisville; Jewish Community Relations Council of Memphis; Milwaukee Jewish Council; Jewish Community Relations Council of Minnesota; Nashville Jewish Community Council; Jewish Federation of New Britain, Conn.; New Haven Jewish Community Council; Jewish Community Council of Newport News, Va.; Norfolk Jewish Community Council; Jewish Community Relations Council for Alameda and Contra Costa Counties, Oakland, Calif.; Central Florida Jewish Community Council (Orlando); Jewish Federation of Palm Beach County; Jewish Community Council of Paterson, N.J.; Jewish Community Council of Peoria, Ill.; Jewish Community Council, Perth Amboy, N.J.; Jewish Community Relations Council of Greater Philadelphia; Jewish Community Relations Council, Pittsburgh; Jewish Community Council of the Plainfields, N.J.; Jewish Federation of Portland, Me.; Community Relations Committee of the Jewish Welfare Federation of Portland, Ore.; Jewish Federation of Raritan Valley, N.J.;

The organizations are affiliated with the National Community Relations Advisory Council, a coordinating body.

The organizations joining in this brief include in their membership the overwhelming majority of Americans affiliated with Jewish organizations.

Each of these organizations is concerned with preservation of the security and constitutional rights of Jews in America through preservation of the security and constitutional rights of all Americans.

They are therefore deeply concerned with the issues and outcome of this case. One of their primary purposes is to cope with racial and religious prejudice in the United States through the elimination of discrimination against racial, religious and ethnic groups comprising the American population. These organizations believe that the welfare of Jews in the United States is inseparably related to the extension of equal opportunity for all. Discrimination in housing against members of any racial, religious or ethnic group, therefore, is a threat to all groups and to the individual members thereof.

Richmond Jewish Community Council; Jewish Community Council, Rochester, N.Y.; Sacramento Jewish Community Relations Council; Jewish Community Council of St. Joseph County, Ind.; Jewish Community Relations Council of St. Louis; Community Relations Council of San Diego; San Francisco Jewish Community Relations Council; Jewish Community Council of San Jose, Cal.; Jewish Council of Savannah, Ga.; Jewish Community Council, Schenectady, N.Y.; Scranton Lackawanna Jewish Council; Jewish Federation of Springfield, Ill.; Jewish Community Council of Springfield, Mass.; Syracuse Jewish Welfare Federation; Jewish Welfare Federation of Toledo; Jewish Federation of Trenton; Tucson Jewish Community Council, Tulsa Jewish Community Council; Jewish Community Council, Utica; Jewish Community Council of Greater Washington; Jewish Federation of Waterbury; Wyoming Valley Jewish Committee, Wilkes-Barre, Pa.; Jewish Federation of Worcester, Mass.; Jewish Community Relations Council of the Jewish Federation of Youngstown, Ohio; Jewish Welfare Federation of Des Moines, Iowa.

Statement of the Case

There is no dispute concerning the essential facts in this case. The petitioners, Joseph Lee Jones and his wife, Barbara Jo Jones, sought to purchase real property in a residential development operated by the respondents. They selected a lot and offered to pay the advertised price to have a house built upon it. For the sole reason that Mr. Jones is a Negro, their offer was rejected.

The residential development in question, Paddock Woods, is a subdivision of more than one hundred projected homes which are being erected with conventional mortgage financing. No guarantees of any kind are provided either by the Federal Housing Administration or by the Veterans Administration, nor is there any other direct governmental assistance to this enterprise. The development does, however, furnish its inhabitants with such quasi-governmental services as streets, playgrounds and a garbage collection system. Moreover, it is clear that the State of Missouri, its political subdivisions, and their various agencies are involved indirectly in this residential venture to the extent that they have imposed zoning laws, building codes and licensing requirements which affect the respondents and their agents.

In substance the petitioners assert that both the Civil Rights Act of 1866 (in its present codification, 42 U.S.C. §1982) and the Fourteenth Amendment establish their right to purchase property without discrimination, and that this right is enforceable regardless of whether or not "state action" is involved. They therefore seek both damages and mandatory injunctive relief. The respondents

contend, to the contrary, that "state action" must be present for the petitioners to prevail, and that the allegations of the petitioners fail to establish the existence of this requisite.

The United States District Court for the Eastern District of Missouri dismissed the complaint for failure to state a cause of action on the ground that §1982 is subject to the strictures of the Fourteenth Amendment, which is applicable to the states but not to private citizens. The District Court ruled that there was insufficient "state action," on the facts of this case, to invoke the Fourteenth Amendment.

On appeal to the Court of Appeals for the Eighth Circuit, the decision of the lower court was affirmed. While evincing sympathy in its opinion for the cause asserted by the petitioners, the Circuit Court declared itself impelled, as an inferior tribunal, to follow the prior pronouncements of this Court which were deemed to be binding upon it. This Court has consented to hear the case.

Summary of Argument

Section 1982 of Title 42 of the United States Code provides:

> "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

This provision originated in the Civil Rights Act of 1866. Subsequently it was reenacted as part of the Civil Rights Act of 1870.

The language of Section 1982 is unambiguous. If this provision is not enforceable by a citizen, then obviously it asserts a right for which there is no remedy. It thus becomes a meaningless appendage, a statute which ordinarily would be vital, but instead is a dead letter.

This brief will not address itself to the early history of Section 1982, nor to its relationship with the Thirteenth or Fourteenth Amendments, nor to the abundant case law which could be cited with reference thereto. We learn that other briefs which either have been already filed with this Court, or shall be filed shortly, will be devoted to these questions in great depth and detail.

Rather, it will be the purpose of this brief to delineate the impact of widely practiced housing discrimination today upon the American body politic, generally, and upon minority group members particularly. We will endeavor to show that this impact has been tragic and far reaching, and that judicial redress by means of Section 1982 is imperative. Since no judicial decision is rendered in a social vacuum,[1] the ugly realities of the consequences of segregated housing should be relevant to the ultimate outcome of this case.

* * * * *

The brief opens with an appraisal of the impact of housing discrimination against people of the Jewish faith.

Its main thrust, however, is devoted to the consequences of housing discrimination against Negroes, which poses by

1. "Good laws are laws congruent to the needs of people in a given time and place;"—Edmund N. Cahn, Professor of Law, New York University in *The Sense of Injustice* (p. 106), New York University Press (1949).

far the more serious problem. After describing the conditions of life in the Negro ghettos, the brief confronts the relationship between segregated housing and job opportunities, the relationship between segregated housing and public school segregation and, finally, an array of other disabling effects that are produced and perpetuated by such involuntary residential isolation.

It next assesses the causes of Negro housing segregation, concluding with a determination that an effective federal open housing law is a necessity.

ARGUMENT

I

Housing Discrimination Directed Against Members of the Jewish Faith

The historical account of housing discrimination in the U.S. would not be complete unless mention, however brief, is made of the early and even contemporaneous experiences of American Jews—especially in the larger cities. Thus, since this brief is submitted in behalf of an aggregation of Jewish organizations, it is appropriate that it launch itself with a discussion of the impact of housing discrimination upon Jews. In doing so, it not only relates the American Jewish community to the complex problem of discrimination itself, but also reflects an authentic identification of members of the Jewish faith with the proliferated problems of discrimination confronting the American Negro.

Among the early restrictive covenants that ran with the land in many states and, with a few variations, were largely

complied with by those in the chain of title to that land, was one that provided as follows:

> "No part of the land hereby conveyed shall ever be used, or occupied by, or sold, demised, transferred, conveyed unto, or in trust for, leased, or rented, or given, to Negroes, or any person or persons of Negro blood or extraction, or to any person of the Semitic race, blood, or origin, which racial description shall be deemed to include Armenians, Jews, Hebrews, Persians and Syrians * * *"[2]

In the first part of this century, and for many years thereafter until recently, housing discrimination directed against Jews was fairly commonplace. It was primarily concentrated in urban centers. In the report of a study of Jewish life in the United States, conducted by John Higham, Professor of Sociology at the University of Michigan,[3] examples are offered of modes of both covenanted and uncovenanted housing discrimination:

> "Already at the turn of the [20th] century a great stream of humanity was crossing from the Lower East Side of New York into Williamsburg, Greenpoint, and Brownsville. The older Brooklyn settlers took so unkindly to the newcomers that the latter established a Jewish Protective Association in 1899 to spur civil action against Jew-beating rowdies. Another sizable colony formed in Harlem. As it expanded, many a land-

2. This covenant, approximately as quaintly phrased, appeared in the famous Miller deeds in the Washington, D.C. area. *Shelley* v. *Kraemer,* 334 U. S. 1 (1948) rendered these covenants unenforceable, but held they might be complied with by the parties voluntarily.

3. "Social Discrimination Against Jews, 1830-1930" (Publication of the American Jewish Historical Society), Vol. XLVII, No. 1 (September, 1957).

lord in the area hung out a "to-let" sign bearing the warning "No Jews."

"During the 1900's, also, Boston Jewry broke out of the tenement districts around the harbor and pressed southward, with consequences much the same. As the migration descended upon the middle-class suburbs of Dorchester and Roxbury, home-owners either fled or resorted to restrictive covenants. In Roxbury a mass meeting of Jews demanded more adequate police protection against hooligans. Real estate agents in both areas refused to rent apartments to Jews; and often their neighbors' unpleasant behavior forced Jews to vacate newly acquired homes."

It is a melancholy fact that yesterday's housing discrimination against Jews, while by no means the grievous problem on a mass scale comparable to that to which non-whites are exposed, still exists throughout the country. Numerous pockets of residential communities yet will not accept Jews as owners or lessees of real property. While in the most general terms Jews are now, after generations of systematic exclusion, free to live almost anywhere their economic status permits, and it is rare to find a Jew whose life situation is presently irreparably damaged solely because of dwelling exclusion, nevertheless the American Jew must indeed feel deeply aggrieved by such examples of rejection as yet persist, a rejection that represents a genuine affront to his sense of personal dignity. While it no longer serves to imprison him, as often it once did, in an intolerable residential predicament, to the extent that Jews are still barred from living wherever they choose, as members of other religious groups may, the very act of exclusion serves as a means of humiliation, imposed only because of a particular religious affiliation.

This may occur in places as widely disparate as Delray Beach, Fla.[4] and Bronxville, N.Y., or in a number of suburban areas of the District of Columbia, or in respect of an application to purchase a cooperative apartment in certain sections in New York City.[5] Such practices, still stubbornly pursued, must be noted as bearing upon the problem to which we address ourselves; they symbolize the still existing remnants of an earlier era in this country's history which now and again mirror its chronic, collective inhospitality to certain racial, religious and ethnic groups.[6]

The frequently absurd examples of residential discrimination against Jews perhaps have never been more graphically illustrated than by the disclosure in the press[7] of the "point" system which, as recently as 1960, was being used to screen prospective residential purchasers in Grosse Point, Michigan, once described as "the boudoir of Detroit." Each would-be buyer in that community was graded by means of a questionnaire, conceived by the local realty board, which was completed by a private detective. Out of a maximum possible arbitrary 100 points, a Jew, to qualify for residential admission to the community, was required (by means of a quaint system of scoring) to score 85. A

4. Statement of Eugene L. Sugarman, Chairman, New York Regional Advisory Board, Anti-Defamation League of B'nai B'rith to U. S. Commission on Civil Rights, February 3, 1959, New York, N. Y., 411. (U. S. Government Printing Office, Washington: 1959.)

5. Statement of Irving M. Engel, President, American Jewish Committee to U. S. Commission on Civil Rights, February 3, 1959, New York, N. Y., 395, 396 and 402. (U. S. Government Printing Office, Washington: 1959.)

6. *Viz.*, The national origins quota system enacted as part of the McCarran-Walter Immigration Act, 8 U.S.C.A. §1101 *et seq.* (1952).

7. *The New York Times,* April 20, 1960.

person of southern European extraction, however, could pass with 75, and a Pole with but 55 points. Negroes and Orientals were not eligible to take the test.[8]

The grading scheme contained a number of other bizarre features. A Jew with an Anglo-Saxon name, for example, would receive two points, whereas a classic Jewish name was worth zero. Indeed, a special "Blue Form" was introduced explicitly for the purpose of evaluating Jewish applicants, allowing only three points for a Jew who dressed conservatively, though a non-Jew would be awarded four points for the same sartorial attribute. A local Congregational minister wryly observed that Jesus Christ, a carpenter of "swarthy" complexion (swarthiness too being deemed undesirable), "would have failed the test."[9]

The whole process would have been simply ludicrous, had it not been so odious.[10] It has since been discontinued, as a result of governmental agency pressure.

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8. *Time* Magazine (April 25, 1960) in an item entitled "Grosse Pointe's Gross Points" commented: "What makes neighboring Detroiters smile about the carefully protected Grosse Pointe exclusivity is that the area's permanent, well-established residents somehow included such noted Detroit gangsters as Mathew Rubino (20 arrests), Peter Licavoli (24), and John Priziola (17).

9. *Rights,* September, 1960 (Report by Anti-Defamation League of B'nai B'rith, on discrimination).

10. One illustration of how the system operated in practice was furnished by a letter received by the Attorney General of Michigan which read, in part, as follows:

> "My dealings were with Mrs. Irene Bledsoe and Mr. De Santis of Johnstone & Johnstone, Grosse Pointe. When I asked to make a bid on a house, I was told by Mr. De Santis that I must await being passed by the Grosse Pointe Property Owners Association. This took several weeks, I was told then by Mrs. Bledsoe that I could not buy or even look at a house in Grosse Pointe because I was Jewish and could not qualify. I will not

Since the common forms of overt anti-Semitism appear to be somewhat out of fashion, such discriminations as are yet manifested against Jewish applicants for living accommodations frequently are devious. The resultant pattern which has emerged has been described as follows:

> "The Jewish home seeker will frequently find the real estate agent to be amazingly without homes to show him. Sometimes a real estate agent will go beyond this by telling the Jew that he doesn't think he will be 'comfortable' in the area, explaining that there are no Jews living in the vicinity, no temples or synagogues in the immediate vicinity, or that the people in the area are unfriendly towards Jews. He will recount the many experiences he has had where Jews disregarded his advice and had to put their newly purchased home on the market again because of the hostility and social ostracism they experienced. If the Jewish home seeker

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belabor the point with needless detail, but I think some details of personal biography might be of interest in the light of my being disqualified.

"First of all, I am half Jewish and my wife is not Jewish at all. It was told by Mr. De Santis, incidentally, that she qualified and could move to Grosse Pointe. I forgot to ask them about my two-year-old son. We are all native born citizens, light complexioned and without accent. My wife is a scholarship alumna of Cranbrook Academy. The half lineage which is not Jewish in myself is from my mother. She is a Braxton. She is a direct descendant of Carter Braxton who signed the Declaration of Independence. I was raised in Detroit and am a *cum laude* graduate of Wayne University. I am the inventor of the artificial electrical heart and have contributed this invention without recompense to the community. I am a member of Sigma Xi, the national honorary research society. I am the author of many scientific articles in Medicine and am honored to be the recipient of four national medical awards. I am Instructor at Wayne State University College of Medicine for which I accept no salary * * * I hope my personal experience can be of some use to you * * * I could go on but I think my point is clear * * *

Sincerely,

Jean Braxton Rosenbaum, M.D."

persists, the home for sale will unaccountably be withdrawn from the market, or, he will then be told flatly that with respect to the home, the owner has issued express instructions not to sell to Jews."[11]

Although the thrust of housing discrimination directed against Jews is certainly not a problem of the gravity which has confronted Negroes, it has nevertheless served as the central component of a design of economic, political and social discrimination which, as a totality, seeks to impose upon Jews a not-too-subtle badge of rejection and inferiority, i.e., the inscription on the badge seems to read: it is obviously more advantageous to be Christian than Jewish.

II

Effect of Housing Discrimination Upon Negroes

Nearly every ancient restrictive covenant or other modern device directed at Jews as targets of bigotry has included the Negro as an intended fellow-victim. But whereas housing discrimination against Jews presently embodies social insult rather than enduringly critical injury, with respect to Negroes the damage has been infinitely worse; it is beyond comparison!

It is difficult to characterize adequately the conditions which prevail in urban Negro ghettoes without seeming to resort to hyperbole. The stark truth is that, where housing is concerned, most Negroes in America today are compelled to reside in *de facto* concentration enclaves, with no escape in prospect. The civil disorders which have ravaged our cities in recent years convey their own frightful message.

11. "Housing Barriers Against Jews," A. Abbott Rosen, *New City,* August 1, 1963 (Catholic Council on Working Life).

Since massive disturbances of this nature do not ordinarily occur, absent profound social grievances, these disorders establish a clear and compelling case of *res ipsa loquitur.* To the extent that words spontaneously uttered may nonetheless be helpful, ghetto inhabitants have described their own plight simply, yet perhaps more eloquently than is otherwise possible:

> "When they have to get out on the street at 14 or 15 they consider themselves to be a man and are going to take on some responsibility because he is the only man in the house and he has little brothers and sisters going hungry, half starving and trying to get the rent in. It is a bare house, like it is a cold feeling even to be there and you have to go out on the street and become the subject of the same thing out there. There has to be a breaking point."[12]

A Negro woman from a slum in Gary, Indiana, Mrs. Jacqueline Taylor, expressed her feelings about her life in this manner:

> "I mean outside of this district time marches on. * * * They build better and they have better but you come down here and you see the same thing year after year after year. People struggling, people wanting, people needing, and nobody to give anyone help."[13]

In response to a question as to what she would do if she had sufficient income, another resident of the same city, Mrs. Charlotte Gordon, replied:

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12. Hearing before the U. S. Commission on Civil Rights, San Francisco, Calif., May 1-3, 1967, and Oakland, Calif., May 4-6, 1967, p. 284. (U. S. Government Printing Office, Washington: 1967.)

13. Proceedings before the Indiana State Advisory Committee to the U. S. Commission on Civil Rights in Gary, Ind., Feb. 8, 1966, p. 42. (U. S. Government Printing Office, Washington: 1966.)

"The first thing I would do myself is to move out of the neighborhood. I feel the entire neighborhood is more or less a trap. If you check back and check the people on welfare now, nine times out of ten they are people that have been on welfare before. * * *"[14]

Mrs. Rowena Stewart, who lives in the South End of Boston, commented graphically on the housing situation in her neighborhood:

"A person rents a broken-down room for $21 to $24 a week that is rat infested and has cockroaches running all over the place. There are holes in the ceiling where the plaster has fallen down and the people have to share a bathroom. The so-called furnished apartments usually contain a few chairs, a table and an old rusty bed. * * * Frequently, social workers tell families to move out of these homes where the rents are too high, but they never find them decent homes where rents are lower."[15]

The problem of rats in the Hough area of Cleveland was described by one of its residents, Mrs. Hattie Mae Dugan:

"I was living in one apartment, the rats got in bed with me, and my sister is still living in the same building and the rats are jumping up and down. The kids, they play with rats like a child would play with a dog or something. They chase them around the house and things like this."[16]

The inventory of the hideous conditions and of the concomitant anguish and despair in the Negro ghettos is

14. *Ibid.* at 29.

15. The Voice of the Ghetto, Report on Two Boston Neighborhood Meetings p. 16. (Massachusetts State Advisory Committee to the U. S. Commission on Civil Rights, Boston, Mass.: 1967.)

16. Hearings Before the U. S. Commission on Civil Rights, Cleveland, Ohio, April 1-7, 1966, p. 25. (U. S. Government Printing Office, Washington: 1966.)

seemingly endless. But what happens when a Negro attempts to emerge from the ghetto into a more physically congenial neighborhood? The experience of a Negro journalist is illuminating:

> "I remember—more vividly sometimes than I wish—my family's experiences as the single Negro family on an otherwise all-white street in a Southwest Atlanta neighborhood. I remember the first night—the sound of gunshots fired above the house, the sight of cherry bombs and Molotov cocktails tossed on the lawn. I remember returning home with my wife and two children after a short trip to the city to find windows broken and streams of toilet paper decorating the front yard. I remember the sight of my trembling teenage daughter telling her mother and me of an attempt by a white teenage motorist to run her down as she walked along the road from school. I remember the words of my six-year-old son telling us of being chased by larger white boys. 'I wish I was white so they wouldn't do it.' It is not possible to erase such memories.
>
> "When I first sought a home in Atlanta in the summer of 1965, I talked by telephone with white real estate agents, sometimes asking them about specific houses I knew were vacant. Not knowing they were talking to a Negro, some of the agents advised me against considering homes in certain so-called 'fringe' areas because, as they put it, 'the niggers have started moving in there.' After seeing me, these realtors would either refer me to Negro real estate firms or to white firms which sold and rented property in Negro areas. Often white agents candidly told me that they did not handle property for Negroes.
>
> "The role of white realtors in promoting segregated housing is thus easily seen. The part Negro realtors play is less obvious perhaps because they are victims of the system perpetuated by whites. One Negro realtor

interviewed in connection with this article said that when a group of whites attempting to maintain racial balance in their neighborhood asked him to cooperate by discouraging further Negro purchases in the area, he refused because he believes in open occupancy. But in the absence of a federal open occupancy law permitting Negroes to live wherever their financial resources permit and thus discouraging the migration of race-conscious whites seeking lily-white neighborhoods, the practical result of his refusal will be to help bring about total transition of the neighborhood, in other words, to perpetuate segregation."[17]

In this connection, the respondent, Alfred H. Mayer, is quoted as having commented to a reporter for the *St. Louis Globe-Democrat* last October that "the sooner an open housing policy is everywhere, the better."[18] His rationale, apparently, was that it was difficult for one developer not to discriminate against Negroes so long as other local developers discriminated, because of the need to remain successfully competitive.

In cities throughout the North there has been a continuing influx of rural Negroes from the South, and a simultaneous flight of urban northern whites to the suburbs surrounding the inner cities. As Negroes move into a city neighborhood, whites move out.[19] This process, in itself, would be damaging enough to the prospect for an

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17. "Blueprint for Segregation: A Survey of Atlanta Housing," S. L. Adams, *New South,* Spring, 1967 (Southern Regional Council, Atlanta, Ga.).

18. *The National Observer,* December 4, 1967.

19. "An American Dilemma" (Twentieth Anniversary Edition), p. 263, Dr. Gunnar Myrdal, Professor of International Economy, University of Stockholm, Harper & Row (1962). See also: "The White Exodus to Suburbia Steps Up," by Herbert J. Gans, a sociologist on the faculty of Teachers College, Columbia University, *New York Times Magazine,* January 7, 1968, p. 25.

integrated society.[20] But it is markedly exacerbated by the behavior of real estate brokers who affirmatively foster neighborhood segregation.[21] Charles Abrams, a nationally known housing authority, in his book entitled "Forbidden Neighbors," listed thirteen different methods whereby realty groups have endeavored to perpetuate discrimination, subsequent to and designed to evade the implications of the decision of this Court in *Shelley* v. *Kraemer, supra.*[22]

It has been suggested that the behavior of the real estate fraternity, in restricting the sale or rental of property on the basis of race and religion, constitutes a conspiracy to restrain trade in violation of the U.S. anti-trust laws.[23] Indeed, Recommendation 6 of the Report by the U. S. Commission on Civil Rights, in 1962, urged that the President request the Department of Justice to investigate whether such anti-trust violation was actually occurring in the Washington metropolitan area.[24]

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20. "The middle-class Negro is frequently the most bitter Negro, deep down, because he realizes that, even after he's made it economically, he's still a 'nigger' to many whites," says Robert Tindal of the NAACP. "He thought that if he cut his lawn, kept his garbage off the street and didn't argue too loudly with his wife, he'd be accepted; but still he finds the whites leaving the neighborhood." "Postscript on Detroit—'Whitey Hasn't Got the Message'", by J. Anthony Lukas, *New York Times Magazine,* August 27, 1967, p. 53.

21. See "Apartheid American Style," pp. 43-50, by John H. Denton, Diablo Press (1967), for the section entitled "How Does Organized Real Estate Help to Maintain Segregated Housing?"

22. Harper and Row, Inc. (1955). Another popular restrictive device, the gentlemen's agreement, was the subject of a successful novel of the same name by Laura Z. Hobson, Simon and Schuster (1947).

23. Statement on Discrimination in Housing to U. S. Commission on Civil Rights by Irving M. Engel, Honorary President of the American Jewish Committee, April 12, 1962, p. 66. (U. S. Government Printing Office, Washington: 1962.)

24. "Civil Rights U.S.A., Housing in Washington, D. C.," p. 37, U. S. Commission on Civil Rights (U. S. Government Printing Office, Washington: 1962).

A. Housing Discrimination and Jobs

The confinement of Negro workers within racial ghettos is a critical factor in the disproportionately high incidence of Negro unemployment. In an address before a conference in New York City on June 29, 1965, Franklin D. Roosevelt, Jr., then Chairman of the Equal Employment Opportunity Commission, observed:

> "There are many examples to illustrate what a serious obstacle housing segregation is to employment opportunities. This is particularly true during this period when many major industries are decentralizing, moving plants or establishing branch operation in outlying and suburban areas at the same time they are actively recruiting Negro employees. Indeed, thousands of Negroes are losing jobs because they are denied living quarters in or near the new communities in which their employers are relocating their plants." [25]

Illustrative of one of the more crucial and inevitable economic consequences of housing discrimination, namely, inaccessibility of the ghetto dweller to equal occupational opportunities, is the situation in Oakland, California (in Alameda County). Oakland has a Negro population of 120,000 out of a total of 385,000. The over-all Negro unemployment rate in Oakland during the past year was 23%, while for Negro teenagers it was 41%. Yet in the suburban areas of Alameda County, where few Negroes live, there are approximately 185,000 jobs at all levels of skill, of which only 3,700 are held by Negroes. Some jobs are always open; but public transportation from Oakland to the

25. "Affirmative Action to Achieve Integration," p. 22 (National Committee Against Discrimination in Housing, New York, N. Y.: 1966).

outlying areas of the county is limited and costly, and relatively few Negroes in the Oakland slums are economically able to afford car ownership.[26]

Lyle Schaller, a city planner in Cleveland, testified before the U. S. Commission on Civil Rights as to the employment picture in the Cleveland area in 1966:

> "Most of the employment opportunities opening up are in the suburban communities, many of them in the southern and western part of the counties are quite some distance from where the Negro population lives.
>
> "* * * It raises a problem in terms of simply knowing about the jobs being advertised, of getting there before the job is filled, and this kind of thing [*sic*], plus the problem of transportation which is a serious problem for many Negro families."[27]

The January, 1968 issue of *Fortune* is devoted exclusively to "Business and the Urban Crisis." In an appraisal of the poverty and race factors in the proliferating economic problems of St. Louis, Missouri, it is observed:

> "A continuing substitution of white-collar for blue-collar jobs does not promise any great widening of employment opportunities for North Side people. And their poverty hobbles the city. * * * Many people who have thought about the matter, in St. Louis and elsewhere, would agree in a general way with the view expressed by Father Lucius Cervantes, a Jesuit soci-

26. Hearing before the U. S. Commission on Civil Rights, San Francisco, Calif., May 1-3, 1967, and Oakland, Calif., May 4-6, 1967, pp. 16 and 558. (U. S. Government Printing Office, Washington: 1967.)

27. Hearing before the U. S. Commission on Civil Rights, Cleveland, Ohio, April 1-7, 1966. p. 102. (U. S. Government Printing Office, Washington: 1966.)

ologist and brother of St. Louis' present mayor. 'The answer,' he says, 'is to disperse the ghetto. Jobs are in a ring around the city. Allow the poor to follow the jobs.' * * * If a cross-migration could come about, with some middle-class whites moving back to the cities they work in and some Negroes moving out to the suburbs to live and work, it would be possible to discern a less clouded future for St. Louis. * * * But nothing like this can be expected, on a scale large enough to matter, without some new political arrangements. The power of the city stops at that 1876 boundary, and the county beyond wants nothing less than an inflow of Negroes from the city. Some overarching authority would be required to open up the suburbs to large numbers of Negroes—perhaps some kind of metropolitan government imposed, or at least fostered, by state intervention. It is not a good bet that effective new arrangements will emerge any time soon. Yet unless things move in that direction, it is hard to see any future for St. Louis—and by inference many other U. S. cities—except deepening economic blues.''[28]

In sum, there is ample evidence to confirm the correlation between Negro housing segregation in the core cities, and the inability of Negroes to hold jobs in suburban areas which, in effect, are closed to them as places of habitation.

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28. "The St. Louis Economic Blues," William S. Rukeyser, *Fortune,* January, 1968, p. 212.

B. Houing Discrimination and School Segregation

> "Segregated schools perpetuate feelings of inferiority in Negro children and unrealistic feelings of superiority in white children. They debase and distort human beings. They impair the ability of children to profit from democratic education. Indeed, they make it practically impossible to educate children in the ideals of democracy. Before the schools of America can play an effective role in improving the levels of our democracy—before they can prepare children for life in terms broader than mere academic subject matter—the system of segregated schools must be eliminated." [29]

In the landmark case of *Brown* v. *Board of Education,* 347 U. S. 483 (1954), this Court ruled that legally enforced racial segregation in public schools violates the equal protection clause of the Fourteenth Amendment. This Court took judicial notice of the harm done inevitably to Negro children by maintenance of segregated schools. There was no implication in that opinion, however, that segregated schools are detrimental to Negro children only when the segregation is imposed by the state. In fact, the opinion (at 494) cited with approval a finding by a Kansas court that the "impact is *greater* when it has the sanction of the law;" (italics added), thus clearly implying that there is an impact in any event. Since most children in northern cities attend neighborhood schools, and since most residential neighborhoods are racially structured, it is scarcely

29. "Prejudice and Your Child," Dr. Kenneth B. Clark, then Associate Professor of Psychology, City College of New York, Beacon Press (1955), p. 87. The monograph upon which this book was based was titled "Effect of Prejudice and Discrimination on Personality Development" and was cited in footnote 11 in *Brown, supra,* at 494.

surprising that eliminating *de facto* school segregation would be surpassingly difficult, unless housing patterns are radically altered:

> "Indeed, discrimination and segregation in housing are clearly at the root of the whole syndrome of racism involved in the civil rights struggle. Effective and permanent success in the elimination of any single facet of the total civil rights problem is improbable so long as discrimination persists in housing; and this inter-relationship is perhaps most demonstrable in respect to schools. It is clear that housing desegregation is critical to successful widespread desegregation of schools in large urban centers." [30]

C. Other Consequences of Housing Discrimination

(1) Psychological and Social

When racial or ethnic factors, in effect, confine people to a particular residential enclave, the total quality of their lives is affected thereby. Not merely in schools and jobs, but also in churches, hospitals, restaurants and bars, recreational and civic activities, their associations are apt to be restricted to those of their own group. Their interests thus are directed narrowly inward, rather than toward the larger society outside. To the extent that the cultural and social lives of people flourish as a result of a spontaneous sharing of ideas, attitudes, values and styles of life, ghetto inhabitants to the contrary are stunted in their development as human beings by the very fact of their involuntary isolation.[31]

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30. Address by Robert L. Carter, General Counsel, NAACP, Housing Conference, New York, June 29, 1965, as reported in "Affrmative Action to Achieve Integration", p. 28 (National Committee Against Discrimination in Housing, New York, N. Y.: 1966).

31. "Where Shall We Live?"—Report of the Commission on Race and Housing, pp. 35-37 (University of California Press, 1958).

The psychological consequences of enforced residential segregation have been depicted in the following terms:

> "Psychologists are generally agreed that compulsory segregation has harmful psychological effects on the segregated groups. Arbitrary interference with an individual's pursuit of what he considers, and is socially encouraged to consider, a legitimate goal (such as better housing) produces feelings of frustration, hopelessness, and hostility. When minority families are prevented from moving into better homes and neighborhoods as their incomes rise, a normal incentive to self-improvement is taken away. They become habituated to a low standard of housing, and their aspirations for something better are curtailed.
>
> "As an unceasing reminder of inferior status, segregation and the discrimination that goes with it are damaging to the personality development of minority children. Many, particularly adolescents, develop feelings of inferiority and doubts of their personal worth, and they fail to develop strong motivations to achievement.
>
> "Disorganization of family life, common among Negroes of the lower class, results from a historical complex of factors of which housing conditions are only one. However, one of the consequences of segregation has been to compel many Negro families to occupy quarters poorly adapted to family needs. The crowded conditions in many Negro households and the lack of suitable space and facilities for family living have unquestionably contributed to the instability of Negro family ties."[32]

But the psychological damage wrought by segregated housing is by no means limited to Negroes, although surely they are its chief immediate victims. The nation as a whole

32. *Ibid.*, p. 38.

already has paid a terrible moral price for ghettoization in terms of widespread interracial fear and hatred, in the considerable antipathy to America among the non-white peoples who constitute a majority of the world population, and in the inescapably corrosive psychological impact on everyone when a major segment of the community suffers visibly from high rates of physical and mental disease, family breakdown, crime and delinquency.[33]

(2) Crime and Delinquency

Among the domestic concerns of the American people today, the rising crime rate throughout the country perhaps is preeminent. While the problem is exceedingly complex, and no single causative factor may be used to explain criminality, the link between poverty and lawbreaking has been quite conclusively established:

> "One of the most fully documented facts about crime is that the common serious crimes that worry people most—murder, forcible rape, robbery, aggravated assault, and burglary—happen most often in the slums of large cities. Study after study in city after city in all regions of the country have traced the variations in the rates for these crimes. The results, with monotonous regularity, show that the offenses, the victims, and the offenders are found most frequently in the poorest, and most deteriorated and socially disorganized areas of cities. * * * Burglary, robbery, and serious assaults occur in areas characterized by low income, physical deterioration, dependency, racial and ethnic concentrations, broken homes, working mothers, low levels of education and vocational skill, high un-

33. "Emotional Aspects of School Desegregation—A Report by Psychiatrists," pp. 8-9 (Group for the Advancement of Psychiatry, New York, N.Y.: 1960).

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employment, high proportions of single males, overcrowded and substandard housing, high rates of tuberculosis and infant mortality, low rates of home ownership or single family dwellings, mixed land use, and high population density. Studies that have mapped the relationship of these factors and crime have found them following the same pattern from one area of the city to another."[34]

* * *

"Delinquents tend to come from backgrounds of social and economic deprivation. Their families tend to have lower than average incomes and social status. But perhaps more important than the individual family's situation is the area in which a youth lives. * * * Thus Negroes, who live in disproportionate numbers in slum neighborhoods, account for a disproportionate number of arrests. Numerous studies indicate that what matters is where in the city one is growing up, not religion or nationality or race. * * * But for Negroes, movement out of the inner city and absorption into America's middle class have been much slower and more difficult than for any other ethnic or racial group. Their attempts to move spatially, socially, economically have met much stiffer resistance. Rigid barriers of residential segregation have prevented them from moving to better neighborhoods as their desire and capacity to do so have developed, leading to great population density and to stifling overcrowding of housing, schools, recreation areas. Restricted access to jobs and limited upward mobility in those jobs that are available have slowed economic advance."[35]

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34. "The Challenge of Crime in a Free Society"—A report by the President's Commission on Law Enforcement and Administration of Justice, p. 35 (U. S. Government Printing Office, Washington: 1967).

35. *Ibid.*, p. 57.

(3) Uninsurability of Ghetto Property

Among the numerous plaguing consequences of ghettoization is the inability of the residents and property owners in ghettos to secure fire and burglary insurance. This has always been so; "* * * the search for ways to make insurance available in ghetto areas represents a new phase of an old insurance problem." *Business Week* (September 9, 1967) p. 120. Understandably, the persistence of this problem serves also as a powerful deterrent to new business investments urgently needed in such areas.

The President's Commission on Civil Disorders has recognized that this problem was exacerbated by the civil disturbances that took place in predominantly segregated Negro areas in a dozen or more cities during the summers of 1965, 1966 and 1967. This has to do with the reluctance of the insurance industry to cooperate with a voluntary plan designed to provide new fire and burglary insurance for property owners, tenants, and merchants in those slum and ghetto areas.

Hearings have been held under the auspices of the President's Commission by an Advisory Panel on Insurance in riot-affected areas, whose chairman is Gov. Richard J. Hughes of New Jersey.

The result of the failure or refusal, so far, of insurance companies to issue fire and burglary policies has caused a still further significant deterioration in Negro ghettos, especially in those areas which have been called "riot-prone." Negro homeowners and tenants, as well as merchants—Negro and white—are the principal sufferers.[36]

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36. *Wall Street Journal*—July 28, 1967; *New York Times,* November 25, 1967.

III

Causes of Negro Segregation in Housing

"Access of the Negro to decent housing is becoming the vortex around which his other rights revolve. Without housing in areas of his choice, the right of his child to an unsegregated school is meaningless; his right to a job will be impaired; his right to move and to secure shelter in a decent neighborhood will be an empty shell."[37]

There is little disagreement concerning the prevalence of residential segregation based on race; there is considerable disagreement as to its derivation. One widely held opinion is that most Negroes prefer to live separately from whites. Another view is that the crucial determinant in the choice of a place to live is an economic one. Still others believe that purposeful discrimination by whites against Negroes is the paramount factor in housing segregation, suffocating the Negro, and throttling the development of an open society.

An impressively documented article in *Scientific American* (August, 1965) by Karl E. Taeuber, Associate Professor of Sociology at the University of Wisconsin, weighed and analyzed statistically the merits of the latter two divergent points of view. Using a "segregation index," which was applied to 207 cities in the United States, the author concluded that by far the primary cause of racial division in housing was intentional discrimination by whites.

37. "The Housing Problem and the Negro," Charles Abrams, Chairman, Department of Urban Planning, School of Architecture, Columbia University, *Daedalus,* Winter, 1966, p. 72 (Journal of the American Academy of Arts and Sciences).

With regard to the frequently articulated allegation that most Negroes "voluntarily" cluster together as a matter of personal predilection, Dr. Taeuber stated that the available evidence appears to negate this interpretation. In our society, he asserts, prejudice and discrimination are so manifestly deep and pervasive that "freedom of choice" by Negroes is an illusion. One illustration of this is the almost invariably hostile reception accorded any Negro family which dares move into an all-white neighborhood, nearly anywhere in the country (i.e., one of the most flagrant examples: Cicero, Illinois).[38]

As for economic status motivating segregation, Dr. Taeuber's analysis indicated that it is far less significant than many have supposed:

> "There is an even simpler demonstration of the inadequacy of the poverty explanation for residential segregation. The crucial assumption that white and Negro families at the same income level are not residentially segregated is patently false. In no city do high-income Negroes live randomly scattered in the same neighborhoods as high-income whites. In no city do low-income Negroes live in the same neighborhoods as the majority of low-income whites. Regardless of income, most Negroes live in Negro neighborhoods and most whites live in white neighborhoods. * * * Neither free choice nor poverty is a sufficient explanation for the universally high degree of segregation in American cities. Discrimination is the principal cause of Negro residential segregation, and there is no basis for anticipating major changes in the segregated character of American cities until patterns of housing discrimination can be altered." (p. 9)

38. *New York Times,* July 13, 1951.

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IV

An Enforceable Federal Open Occupancy Law Already Exists

In considering Section 1982 as presently satisfying the requirements of a federal statute proscribing discrimination in private housing, we have paid heed to the contention, hitherto made frequently, that Congress has no constitutional authority to enact such legislation. We contend that any doubt on that score is no longer tenable, since it is by now clear, under decisions of this Court during the last 30 years, that under the Commerce Clause of the Constitution, Congress possesses such plenary power (*Wickard* v. *Filburn,* 317 U. S. 111 (1942); *Katzenbach* v. *McClung,* 379 U. S. 294 (1964). In *Heart of Atlanta Motel, Inc.* v. *U. S.*, 379 U. S. 241 (1964), at 257, this Court was concerned with whether Congress was limited to the promotion of commerce or even to the mere avoidance of interference with commerce. This Court found that such limitation was not necessary: "That Congress was legislating against moral wrongs in many of these areas rendered its enactment no less valid."

It must just as forcibly be true that Congress may enact fair housing legislation in pursuance of its power under Section 5 of the Fourteenth Amendment, which provides that: "Congress shall have power to enforce by appropriate legislation the provisions of this article." This Section, interpreted more broadly than was done in the *Civil Rights Cases,* 109 U. S. 3, should be interpreted as conferring upon the Congress all power necessary to achieve the basic purpose of the Fourteenth Amendment, namely, to end inequality based on race.

Except for thus indicating the relevancy of this view of Section 5 to the comments that follow, we will not extend our argument in support of its applicability to the facts in this case, because the briefs of the petitioners and the other *amici* will, we understand, argue this point at greater length.

Twenty-two states thus far have enacted open occupancy statutes, with varying degrees of comprehensiveness. Yet, since laws are not self-executing, it is apparent that they have not resolved the problem of housing discrimination in those states. They have helped to some extent, but aggressive enforcement of these laws has been impeded by stubborn resistance to integration (i.e., the Proposition 14 case in California[39]). Such legislation simply does not, as yet, command the allegiance of a clear majority of white citizens who, unhappily, do not fully appreciate the enormity of the housing segregation problem. Wherever fair housing laws are submitted for approval to the electorate by means of referenda, the common experience has been that they are rejected.[40] The harsh truth is that many elements in this nation, almost from its very founding, have nurtured a society with walls of separation in countless places between the dominant whites and the subservient non-whites (Indians, Negroes, etc.). The American dream has been sharply at variance with the American reality. The situation in housing today clearly reflects this tragic history of Negro deprivation, even as it serves to perpetuate and to compound it.

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39. *Reitman* v. *Mulkey,* 387 U. S. 369 (1967).

40. "Fair Housing Statutes and Ordinances" (a compilation published by National Committee Against Discrimination in Housing, New York, N. Y.: June, 1966).

The Constitution of the United States, however, is not necessarily, nor perhaps even essentially, a majoritarian instrument. In the eyes of many, its peculiar genius lies in the sturdy protection afforded by it to minority rights which may be traduced by majority encroachment. This Court has in the past been sensitive to numerous threatened denials of basic human rights such as religious liberty.[41] We submit that the right to live where one chooses, within the limits of economic capability, regardless of the inhospitality of others (who enjoy the collateral right to move should they so choose), is a right equally worthy of protection by this Court.

This much is clear: a federal open occupancy law, such as is already provided by Section 1982, will be no panacea. The implementation of such a law, however, for its moral and educational value alone, would constitute a giant step forward along the road to the professed American goal of "liberty and justice for all." Moreover, the mere fact that certain of the state statutes have received rather sluggish enforcement does not mean that the federal government need follow suit. Vigorous leadership and affirmative action to insure compliance with a national open occupancy law could well trigger a positive response throughout the country in favor of open housing for all. Some people who are opposed to a fair housing ordinance solely in their own community, fearing an island of open occupancy in a sea of exclusion, may feel quite differently were open occupancy to become the general rule rather than the exception:

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41. *West Virginia Board of Education* v. *Barnette*, 319 U. S. 624 (1943); *Torcaso* v. *Watkins*, 367 U. S. 488 (1961); *Abington School District* v. *Schempp*, 374 U. S. 203 (1963); *Sherbert* v. *Verner*, 374 U. S. 398 (1963).

"It is important to remember too, that if there were a free housing market for Negroes in the United States today there would be no reason to fear wholesale invasion. Negroes represent less than five per cent of the total population in the North today. If they were not restricted in the choice of their homes to a few ghetto areas, they could easily disperse throughout the country and there would be little reason to fear that they might inundate any single community."[42]

In very large measure, attitude changes derive simply from what people have become exposed or accustomed to; our fair employment practices laws demonstrate that truism. It is time, then, to accustom the American people to integrated housing, and the statute to accomplish this objective is already part of the federal law (§1982). Only its activation yet remains to be achieved.

Conclusion

The decision of the Court below should be reversed.

Respectfully submitted,

EDWIN J. LUKAS
Attorney for the Amici

SAMUEL RABINOVE
Of Counsel

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42. *The Myths of Racial Integration,* Naomi Levine (American Jewish Congress, New York, N. Y.: 1960).

TON, MICHAEL J.J. VS. HATTIESBURG, MISSISSIPPI 1964

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IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

right to counsel

U.S. COURT OF APPEALS
FILED
APR 16 1964
EDWARD W. WADSWORTH
CLERK

No. 21,441

MICHAEL LEFTON, et al.

Appellants

v.

THE CITY OF HATTIESBURG, MISSISSIPPI,

Appellee

Petition for Alternative Writ of Mandamus to the United States District Court for the Southern District of Mississippi

Before RIVES, BELL and WRIGHT*, Circuit Judges.

PER CURIAM

This is an application for writ of mandamus, seeking to secure the filing in the District Court of a petition removing a number of criminal causes from the City Court of Hattiesburg, Mississippi, to the District Court, under 28 U.S.C. § 1446. The petition alleges that the District Court clerk, acting under local rules of court, refused to file the criminal removal petition for these reasons: (1) It was in behalf of more than one individual. (2) It did not have attached a removal bond of $500 for each. We note that Congress has provided in the removal statute that "A defendant or defendants desiring to remove any * * * criminal prosecution * * * shall file a verified petition * * *." 28 U.S.C. § 1446(a) (emphasis added). The statute also provides for removal bonds only for civil cases. 28 U.S.C. § 1446(d). The Revisers' Notes state: "[T]he requirement for cost bonds is limited to civil actions in conformity with the more enlightened trend of modern procedure to remove all unnecessary impediments to the administration of criminal justice."

* Of the D. C. Circuit, sitting by designation.

28 U.S.C.A. § 1446 Note. The stated grounds for refusal to file, whether or not authorized by local rule of court, would thus seem to be improper under the governing Act of Congress.

The application before us also recites that the criminal removal "petition did not contain the signature of an attorney licensed to practice before the United States District Court, Southern District of Mississippi, as required by local rules promulgated March 6, 1949," and "That the individuals bringing this removal action and their attorneys are unable to obtain the assistance and/or association of any attorneys, contacted to date, to assist in this matter." It does not appear whether this was an additional ground for refusal to file the petition. See 28 U.S.C. § 1654; Brasier v. Jeary, 8 Cir., 256 F.2d 474 (1958); Kovrak v. Ginsburg, 3 Cir., 280 F.2d 209 (1960). It also does not appear whether the attorney who did sign the petition had requested admission to the District Court bar pro hac vice, or waiver of the rule because of unavailability of local counsel. We cannot assume that, if local counsel are unavailable, the District Court would close its doors on these litigants or their attorney, who is a member of the United States Supreme Court bar. Unless supplemental affidavits showing this to be in fact the case should be presented to us, we would have no occasion to grant the writ.

The application will be held in abeyance for fifteen days and jurisdiction will be retained. Applicant may file supplemental affidavits, or take such further action in the District Court as he deems advisable. If no further papers have been filed within the indicated period, the application will be denied.

Edward W. Wadsworth

Clerk, U. S. Court of Appeals, Fifth Circuit
New Orleans, Louisiana

APR 18 1961

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 21441

MICHAEL LEFTON, ET AL.,
Petitioners,

versus

THE CITY OF HATTIESBURG, MISSISSIPPI,
Respondent.

Petition for Alternative Writ of Mandamus to the United States District Court for the Southern District of Mississippi.

(June 5, 1964.)

Before RIVES, BELL and WRIGHT,* Circuit Judges.

WRIGHT, Circuit Judge: This proceeding involves the access of litigants to the federal courts. Over forty defendants in criminal prosecutions in a state court of Mississippi seek to remove the causes into the United States District Court under 28 U.S.C. § 1446. The clerk

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* Of the D. C. Circuit, sitting by designation.

of the United States District Court for the Southern District of Mississippi, acting under local court rules, refuses to accept for filing the single removal petition covering all 40-odd state prosecutions, and the defendants seek a mandamus against the judge of the District Court to require that such filing be permitted. The application for mandamus states that the District Court practice "limits and prohibits any effective use of the criminal removal provisions covering civil rights cases in that district."

It appears from the papers before us that the petitioners were charged with violations of H.B. 546, 1964 Sess. Miss. Leg., a statute which denounces picketing and demonstrations in the environs of public buildings. The statute, set out in the margin,[1] was enacted by the Mississippi Legislature on April 8, 1964. The 40-odd petitioners were arrested in Hattiesburg, Mississippi, on April 10. According to the sworn removal petition:

---

[1] "AN ACT to prohibit the unlawful picketing of state buildings, courthouses, public streets, and sidewalks.

"Be it enacted by the Legislature of the State of Mississippi:

"Section 1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or mass demonstrations in such a manner as to obstruct or interfere with free ingress or egress to and from any public premises, State property, county or municipal courthouses, city halls, office buildings, jails, or other public buildings or property owned by the State of Mississippi or any county or municipal government located therein or with the transaction of public business or administration of justice therein or thereon conducted or so as to obstruct or interfere with use of public streets, sidewalks or other public ways adjacent or contiguous thereto.

"Section 2. Any person guilty of violating this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than Five Hundred Dollars ($500.00), or imprisoned in jail not more than six (6) months, or both such fine and imprisonment.

"Section 3. This act shall take effect and be in force from and after its passage."

"Petitioners are members of the Student Non-Violent Coordinating Committee, affiliated with the Conference of Federated Organizations, both Civil Rights groups, and were at the time of their arrests, engaged in a voter registration drive in Forrest County, Mississippi, assisting Negroes to register so as to enable them to vote as protected under the Federal Constitution and the Civil Rights [statute]."

On April 13, the verified removal petition was refused filing by the District Court, through its clerk, for the following reasons:

(1) The petition was in behalf of more than one individual.

(2) It was not accompanied by a filing fee of $15.00 per individual.

(3) It was not accompanied by a removal bond of $500.00 per individual.

(4) It was not signed by a member of the bar of the Southern District of Mississippi.

Petitioners' "Alternative Petition for a Writ of Mandamus," seeking to require the judge of the District Court to have the petition filed, was filed in this court on April 13 under Rule 13a.[2] We have authority upon

[2] Rule 13a of this court reads:

"(a) Petition for Writ; Service and Filing. Application for a writ of mandamus or of prohibition directed to a judge or judges shall be made by filing a petition therefor with the clerk with proof of service on the respondent judge or judges and on all parties to the action in the district court. The petition shall contain

Rule 13a to order that the District Judge be made a respondent in these mandamus proceedings and to fix a time for him to file an answer. Out of deference to judicial decorum, however, we did not do so, but ordered that the application for mandamus be held in abeyance to permit the petitioners to take such further action in the District Court as they deemed advisable, or to file supplemental papers with us. At the same time, we also issued a *per curiam*[3] setting forth the

a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and of the relief sought; a statement of the reasons why the extraordinary writ of mandamus or prohibition should issue; and copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. The petition may be accompanied by supporting brief or memorandum. Upon receipt of the prescribed docket fee the clerk shall docket the petition and submit it to the court.

"(b) Denial; Order Directing Answer. If the court is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondents within the time fixed by the order. The order shall be served by the clerk on the judge or judges named respondents and on all other parties to the action in the district court. All parties other than the petitioner shall also be deemed respondents with the judge or judges named respondents for all purposes. Respondents may answer jointly. If the judge or judges named respondents do not desire to contest the petition, they may so advise the clerk and all parties by letter but the petition shall not thereby be taken as admitted. If briefs are required, the clerk shall advise the parties of the dates on which they are to be filed. The proceeding shall be given preference over ordinary civil cases.

"(c) Form of Papers; Number of Copies. All papers may be typewritten. Four copies, including an original, shall be filed with the clerk, but the clerk may direct that additional copies be provided."

[3] The *per curiam* reads:

"This is an application for writ of mandamus, seeking to secure the filing in the District Court of a petition removing a number of criminal causes from the City Court of Hattiesburg, Mississippi, to the District Court, under 28 U.S.C. § 1446. The petition alleges that the

considerations which moved us in making our decision not to invoke immediately the process of Rule 13a. Thus we intended that the petitioners and the District Court have the advantage of our views on the matter

District Court clerk, acting under local rules of court, refused to file the criminal removal petition for these reasons: (1) It was in behalf of more than one individual. (2) It did not have attached a removal bond of $500 for each. We note that Congress has provided in the removal statute that 'A defendant *or defendants* desiring to remove any * * * criminal prosecution * * * shall file *a* verified petition * * *.' 28 U.S.C. § 1446(a) (emphasis added). The statute also provides for removal bonds only for *civil* cases. 28 U.S.C. § 1446(d). The Revisers' Notes state: '[T]he requirement for cost bonds is limited to civil actions in conformity with the more enlightened trend of modern procedure to remove all unnecessary impediments to the administration of criminal justice.' 28 U.S.C.A. § 1446 Note. stated grounds for refusal to file, whether or not authorized by local rule of court, would thus seem to be improper under the governing Act of Congress.

"The application before us also recites that the criminal removal 'petition did not contain the signature of an attorney licensed to practice before the United States District Court, Southern District of Mississippi, as required by local rules promulgated March 6, 1940,' and 'That the individuals bringing this removal action and their attorneys are unable to obtain the assistance and/or association of any attorneys, contacted to date, to assist in this matter.' It does not appear whether this was an additional ground for refusal to file the petition. See 28 U.S.C. § 1654; *Brasier v. Jeary,* 8 Cir., 256 F.2d 474 (1958); *Kovrak v. Ginsburg,* 3 Cir., 280 F.2d 209 (1960). It also does not appear whether the attorney who did sign the petition had requested admission to the District Court bar *pro hac vice,* or waiver of the rule because of unavailability of local counsel. We cannot assume that, if local counsel are unavailable, the District Court would close its doors on these litigants or their attorney, who is a member of the United States Supreme Court bar. Unless supplemental affidavits showing this to be in fact the case should be presented to us, we would have no occasion to grant the writ.

"The application will be held in abeyance for fifteen days and jurisdiction will be retained. Applicant may file supplemental affidavits, or take such further action in the District Court as he deems advisable. If no further papers have been filed within the indicated period, the application will be denied."

so that they could act accordingly. Subsequently, the petitioners have filed supplemental pleadings and affidavits in this court, copies of which have been sent to the District Judge and the prosecutions below; the District Judge has favored us with memoranda of points and authorities, copies of which have been sent to petitioners' counsel.

In order to render unnecessary formal mandatory procedure under Rule 13a, it appears that a fuller expression of our understanding of the governing law may now be appropriate. We shall consider *seriatim* each of the reasons advanced by the District Court for refusal to accept the removal petition for filing.

I.

With reference to the number of persons who may join in a single petition, the removal statute provides:

> "A defendant or defendants desiring to remove any * * * criminal prosecution from a State court shall file * * * a verified petition * * *." 28 U.S.C. § 1446(a).

The primary question presented in these proceedings is whether the 40-odd petitioners who were arrested at the same time and place and charged with violating the same state statute are required to bring separate, individual removal proceedings under the federal removal statute because the Mississippi officials have charged each petitioner individually and separately. Since this question involves the interpretation of a

federal statute, neither state law nor local rules promulgated by the District Court can provide the answer.

On its face the removal statute authorizes the removal of any "criminal prosecution from a State court," irrespective of the number of "defendants desiring to remove." The statute speaks in terms of a single prosecution with one or more defendants. Thus the language of the statute, strictly interpreted, would seem to require a separate petition for removal for every state criminal prosecution.

In civil rights cases, however, Congress has directed the federal courts to use that combination of federal law, common law, and state law as will be best "adapted to the object" of the civil rights laws. *REV.STAT.* § 722 (1875), applying to Title XIII, *REV. STAT.; 42 U.S.C.* § 1988; see 28 U.S.C. § 1443, formerly *REV.STAT.* § 641 (1875); 42 U.S.C.A. § 1988 Note. Therefore a federal court is required to use common law powers to facilitate, and not to hinder, "proceedings in vindication of civil rights." 42 U.S.C. § 1988. To facilitate, and not to hinder, "proceedings in vindication of civil rights," under the circumstances of this case, we think it would be quite appropriate for a District Court to accept the joint removal petition herein presented.

On the present record, however, if the District Court declines to do so and insists upon separate petitions, and further assuming that such a requirement does not so delay matters as to operate to deprive the petitioners of effective access to the federal courts, we would not find the requirement to be such a gross abuse of discretion as to move us to mandamus. We commend this

decision to the informed discretion of the District Court.

II.

Filing fees are not to be collected in connection with criminal removal petitions. Such fees are regulated by statute, and a comparison of the present statute with its predecessor shows that there is now no authority for the clerk to charge fees in such proceedings.

The former statute provided for fees in criminal proceedings:

> "Upon the institution of any suit or proceeding, whether by original process, removal, indictment, information, or otherwise, there shall be paid by the party or parties so instituting such suit or proceeding * * * the sum of $5." Former 28 U.S.C. § 549 (1940 ed.).

The present statute does not authorize fees in criminal proceedings:

> "The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court whether by original process, removal or otherwise, to pay a filing fee of $15 * * *." 28 U.S.C. § 1914 (1948 ed.).

III.

The Act of Congress providing for removal bonds does not authorize them in criminal cases:

> "Each petition for removal of a civil action or proceeding * * * shall be accompanied by a bond * * *." 28 U.S.C. § 1446(d).

If there were any doubt as to whether this limitation was intentional, the Reviser's Notes are clear: "[T]he requirement for cost bond is limited to civil actions in conformity with the more enlightened trend of modern procedure to remove all unnecessary impediments to the administration of criminal justice." 28 U.S.C.A. § 1446 Note. Therefore such bonds may not be required.

IV.

The District Court has a broad discretion concerning admission to practice before it. See 28 U.S.C. § 1954. But, of course, such rules may not be allowed to operate in such a way as to abridge the right of any class of litigants to use the federal courts or to deny the Sixth Amendment right of criminal defendants to counsel. Generally, courts may, if they deem it necessary, require that local counsel be associated in some way with litigation in the local courts. *Cf. Piorkowski v. Arabian American Oil Company,* S.D.N.Y., 131 F.Supp. 553 (1955). However, as the District Judge below has commendably noted, if no local counsel are available, a court rule requiring local counsel should be waived. Moreover, where local counsel are associated in the case to comply with court rules, counsel chosen by the parties may nevertheless take the lead in the direction and argument of the case. See *United States v. Bergamo,* 3 Cir., 154 F.2d 31 (1946).

Federal as well as state courts must be guided in this matter of local rules by the recent decisions of the Supreme Court concerning regulation of attorneys. The Court has said that "A State could not, by invoking the power to regulate the professional conduct of attorneys, infringe in any way the right of individuals and the public to be fairly represented in lawsuits authorized by Congress to effectuate a basic public interest." *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar,* .... U. S. .... (No. 34, October Term, 1963, April 20, 1964), slip opinion p. 6. This principle applies with special force where it is a federal court, and not a state, whose regulations may interfere with lawsuits authorized by Congress. And where, as here, the basic public interest involved is the protection of fundamental constitutional rights of the petitioners, courts must give special heed to the teachings of the Supreme Court to permit neither indirect nor direct "means to bar them from restoring to the courts to vindicate their legal rights. The right to petition the courts cannot be so handicapped." *Id.* at slip opinion pp. 6-7. And since this is a criminal case, the constitutional right of the accused to the assistance of counsel of his own choice reinforces this principle.

In the removal petition at hand, and in the class of cases likely to raise similar problems, "litigation is not a technique of resolving private differences; it is a means for achieving the lawful objectives of equality of treatment by all government, federal, state and local, for the members of the Negro community in this country." *N.A.A.C.P. v. Button,* 371 U.S. 415, 429 (1963).

In this context where the litigation is not brought for private gain, any regulation of the practice of law must show sufficient "substantial regulatory interest," *id.* at 444, to justify the potential and actual inhibitory effects of the regulation on the constitutionally protected right to litigate. *Ibid.*

For these reasons, as we indicated in our earlier memorandum and as the District Judge below agrees, waiver of local rules, or admission to the bar *pro hac vice,* should be allowed when, as herein alleged, the non-local counsel "was unable to find counsel admitted [locally] who would sign the pleadings with him." The Supreme Court has recently taken judicial notice of a similar circumstance in a not unrelated proceeding:

> "* * * Lawsuits attacking racial discrimination, at least in Virginia, are neither very profitable nor very popular. They are not an object of general competition among Virginia lawyers; the problem is rather one of an apparent dearth of lawyers who are willing to undertake such litigation. * * *" *N.A.A.C.P. v. Button, supra,* 371 U.S. at 443.

Such a situation is unworthy of the proud tradition of the Southern bar. We are pleased to note that, after the filing of the above mentioned affidavit, the judges of the District Court were able to secure the names of members of the local bar available to associate themselves with the original counsel for the petitioners herein. It is commendable that the District Court helped secure for petitioners the assistance of counsel

familiar with the local practice. Otherwise original counsel would have had to proceed alone. And it is commendable that gentlemen of the local bar have agreed to perform their duties as lawyers in rendering such service.

It thus appears that there is no reason why petitioners may not now file a removal petition or petitions for the criminal prosecutions here involved, without payment of fees or bond, and with the signatures of local counsel available. No formal order need issue, therefore, designating the District Judge as respondent on the petition for mandamus, as the District Judge's memorandum indicates that he will act upon an expression of our views. See *Maryland v. Soper (No. 2)*, 270 U.S. 36, 44 (1926). For the reasons herein stated, we reserve decision on the question of invoking Rule 13a(b) of our rules, and retain jurisdiction until the matter is finally settled.

BELL, Circuit Judge, concurring specially:

In concurring I do wish to add a word with respect to part one of the opinion having to do with several persons joining in a single petition under the removal statute.

The wisdom of requiring a separate petition for each defendant seeking removal is made manifest by the facts of this case. Many persons are involved. Each is charged separately in the state court. The facts as now developed before us without dispute indicate

that Michael Lefton whose name appears in the style of this case was released by juvenile authorities in Hattiesburg after having been taken into custody. He therefore is not a party seeking removal as he has never been charged in the state court. Moreover, his name is "Lofton".

It goes without saying that a separate petition on behalf of each person seeking removal would tend to effectuate a more orderly procedure in the District Court, and this is all the more true in this day of mass arrests. This requirement should, of course, be balanced against the onerous task of preparing multiple petitions, but this, as Judge Wright leaves it, is procedural and something best left to the discretion of the District Court.

In essence the ultimate concern in matters of the type involved in these removal proceedings is to determine the truth of the allegations with respect to deprivation of constitutional rights. The removal statute may not be used to thwart local law enforcement. The duty first falls on the state courts and state officers to accord and protect constitutional rights. Art. 6, Cl. 2 and 3, U.S. Const. It is failure or abdication there which gives rise to the proceeding in the federal court.

Adm. Office, U. S. Courts—E. S. Upton Printing Co., N. O., La.

MEMORANDUM

JUN 15 1964

From: SMITH, WALTZER, PEEBLES & JONES
Benjamin E. Smith
Bruce C. Waltzer
1006 Baronne Bldg.
305 Baronne St.
New Orleans, Louisiana

KUNSTLER KUNSTLER & KINOY
William M. Kunstler
Arthur Kinoy
511 Fifth Avenue
New York, New York 10017

We are enclosing for your information a copy of an opinion handed down by the Court of Appeals for the Fifth Circuit in Lefton v. City of Hattiesburg, Mississippi, on June 5th.

The opinion, written by Circuit Judge J. Skelly Wright of the District of Columbia Circuit, sitting by designation in the Fifth Circuit, for himself, Circuit Judges Rives and Bell, is of extreme importance in the entire field of civil rights removals under Title 28, U.S.C., §1443. The opinion was handed down in a mandamus action brought by the law firms of Kunstler Kunstler & Kinoy and Smith, Waltzer, Jones & Peebles against Federal District Court Judge William Harold Cox, in the Southern District of Mississippi. The opinion strikes down several local rules of the Southern District of Mississippi which had seriously hampered the use of the removal statute in civil rights cases.

The opinion holds:

(1) No filing fee is required for the filing of civil rights removal petitions;

(2) No removal bond is required in the filing of civil rights removal petitions;

(3) Where local counsel are not available or assigned by the Court, otherwise qualified out-of-state counsel may appear in civil rights cases.

In striking down these restrictive rules which have been used to hamper civil rights removals to the Federal Courts, the opinion develops the important broad principle that civil rights removal proceedings involve the protection of fundamental constitutional rights requiring special protection on the part of the Federal courts.

6/10/64

PER CURIAM OPINION OF COURT OF APPEALS

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 21,441

MICHAEL LEFTON, :

Appellant, :

v. :

CITY OF HATTIESBURG, MISSISSIPPI, :

Appellee. :

:

PETITION FOR WRIT OF MANDAMUS
TO THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT
OF MISSISSIPPI

Before RIVES, BELL & WRIGHT, Circuit Judges

Per Curiam

This is an application for Writ of Mandamus, seeking to secure the filing in the District Court of a petition removing a number of criminal cases from the City Court of Hattiesburg, Mississippi, to the District Court, under 28 U.S.C. 1446. The petition alleges that the District Court Clerk, acting under local rules of Court, refused to file the criminal removal petition for these reasons: (1) It was on behalf of more than one individual, (2) it did not have attached a removal bond of $500 for each. We note that Congress has provided in the removal statute that "A defendant or defendants desiring to remove any * * * criminal prosecution * * * would file a verified petition * * * " 28 U.S.C. 1446(A). [Emphasis added]. The statute also provides for removal bonds for civil cases. 28 U.S.C. Sec. 1446(D). The revisers notes state: "[T]he requirement for cost bond is limited to civil actions in conformity with the more

enlightened trend of modern procedure to remove all unnecessary impediments to the administration of criminal justice." 28 U.S.C.A. Section 1446. Note. The stated grounds for refusal to file, whether or not authorized by local rule of court, would thus seem to be improper under the governing act of Congress.

The application before us also recites that the criminal removal "petition did not contain the signature of an attorney licensed to practice before the United States District Court, Southern District of Mississippi, as required by local rules, promulgated March 6, 1940." And "that the individuals bringing this removal action and their attorneys are unable to obtain the assistance and/or association of any attorneys, contacted to date, to assist in this matter." It does not appear whether this was an additional ground for refusal to file the petition. See 28 U.S.C. Section 1654; Brasier v. Jeary, 8th Circuit, 256 F 2d 474, 958; Korvak v. Ginsburg, 3rd Circuit, 280 F 2d 209 (1960). It also does not appear whether the attorney who did sign the petition had requested admission to the District Court bar pro hac vice, or waiver of the rule because of unavailability of local counsel. We cannot assume that, if local counsel are unavailable the District Court would close its doors on those litigants or their attorney who is a member of the United States Supreme Court bar. Unless supplemental affidavits showing this to be in fact the case should be presented to us, we would have no occasion to grant the writ.

The application will be held in abeyance for fifteen days and jurisdiction will be retained. Applicant may file supplemental affidavits or take such further action in the District Court as he deems advisable. If no further papers have been filed within the indicated period, the application will be denied.

PETITION FOR WRIT OF MANDAMUS

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

THE CITY OF HATTIESBURG, MISSISSIPPI	:	NO. _____
VERSUS	:	CRIMINAL ACTION
MICHAEL LEFTON, et al	:	
- - - - - - - - - - - - - - - -	:	

ALTERNATIVE PETITION FOR A WRIT OF MANDAMUS

The alternative petition of Michael Lefton, et al, for a writ of mandamus to coerce Hon. W. Harold Cox, Judge, United States District Court for the Southern District of Mississippi, Hattiesburg Division, to file a matter entitled "City of Hattiesburg vs. Michael Lefton, et al", a criminal removal petition removing certain criminal causes from the City Court of Hattiesburg, Mississippi to the United States District Court, Southern District of Mississippi, respectfully represents:

1.

That at 9:00 o'clock a.m. on April 13, 1964 a verified petition was brought for filing to the Hattiesburg, Mississippi office of the Clerk, United States District Court, Southern District of Mississippi. This petition was presented by Benjamin E. Smith of the Louisiana Bar as well as a member of the United States Supreme Court Bar.

2.

Said clerk refused to accept for filing the above mentioned petition for the following reasons:

a. The removal petition was in behalf of more than one individual contrary to local rules promulgated by the Judges of the United States District Court, Southern District of Mississippi on December 2, 1963.

b. Said petition did not have attached to it a removal bond in the amount of $500.00 posted for each individual seeking removal under the rules promulgated by the Judges of the United States District Court, Southern District of Mississippi on December 2, 1963.

3.

Said petition did not contain the signature of an attorney licensed to practice before the United States District Court, Southern District of Mississippi as required by local rules promulgated March 6, 1940.

4.

That local rules of the United States District Court, Southern District of Mississippi promulgated on December 2, 1963 are inconsistent with those contained in 28 USCA and are therefore null and void. More particularly 28 USCA 1446 does not in any way prescribe that removal for the same causes can not be cumulated in the same petition. That 28 USCA 1446 d provides that bond is posted only in the removal of a civil action.

5.

That the individuals bringing this removal action and their attorneys are unable to obtain the assistance and/or association of any attorneys, contacted to date, to assist in this matter. That the local rules of the United States District Court, Southern District of Mississippi, which said court is an integral part of the Federal Judicial System, can not refuse to allow an attorney licensed to practice before the Supreme Court of the United States, the highest court in the Federal Court System, to practice before it.

6.

The Honorable W. Harold Cox was approached at approximately 12:00 o'clock p.m. on April 13, 1964 by Benjamin E. Smith who

asked the Judge to order the filing of the above mentioned criminal removal petition. Judge Cox informed Mr. Smith that the petition could not be filed by the clerk unless local court rules were complied with.

WHEREFORE relator prays the premises and annexed attorneys affidavit and memorandum consider that:

1. A writ of mandamus issue herein directed to Honorable W. Harold Cox, Judge of the United States Court for the Southern District of Mississippi commanding him to file the criminal petition entitled "City of Hattiesburg, Mississippi vs. Michael Lefton, et al", presented by Benjamin E. Smith for filing at 9:00 o'clock a.m. on April 13, 1964, or that he show cause to the contrary, if he can, on such a day and such an hour as this Honorable Court may order.

SMITH, WALTZER, JONES & PEEBLES

By_____

Bruce C. Waltzer
1006 Baronne Building
New Orleans, Louisiana

and

KUNSTLER, KUNSTLER & KINOY
511 5th Avenue
New York, New York

Attorneys for Petitioners

APR 20 REC'D

April 17, 1964

MEMORANDUM from KUNSTLER KUNSTLER & KINOY
511 Fifth Avenue
New York 17, N. Y.

and SMITH, WALTZER, JONES & PEEBLES
1006 Baronne Building
New Orleans, La.

Because of the importance of the per curiam opinion of the United States Court of Appeals for the Fifth Circuit in a mandamus proceeding arising out of Hattiesburg, Mississippi which directly affects civil rights litigation in Mississippi and other states of the South, we are enclosing a copy thereof as well as the petition upon which it was based.

Briefly, the per curiam opinion disposes of serious procedural obstacles to federal civil rights litigation which have been raised by the judges of the United States District Court for the Southern District of Mississippi. In summary, the opinion appears to provide as follows:

1. Any local federal court rules or regulations requiring the filing of cost bonds in removals under 28 U.S.C. 1443 of criminal prosecutions from state courts are unauthorized and improper.

2. Any local federal court rules or requirements that individual petitions for removal under 28 U.S.C. 1443 must be filed for each state court defendant are unauthorized and improper.

3. If local counsel are unavailable, a federal district court cannot "close its doors" to litigants represented by qualified attorneys who are not members of the local bar.

In conclusion, the Court of Appeals retained jurisdiction over the petition for a writ of mandamus in the event of any failure to comply with its per curiam opinion within fifteen days.

IN THE MATTER OF LOCAL 208 OF THE TOBACCO WORKERS INT'L UNION, 1964

Box 45
Folder 79

Wisconsin

Please Retain Original Order

In the Matter of

LOCAL 208 of the TOBACCO WORKERS INTERNATIONAL UNION

-and-

LOCALS 176 and 177 of the TOBACCO WORKERS INTERNATIONAL UNION

-and-

LIGGETT & MYERS TOBACCO COMPANY, DURHAM, NORTH CAROLINA

The undersigned Consultant was appointed in December, 1964, by the President's Committee on Equal Employment Opportunity to investigate certain charges which had been made regarding employment practices at Liggett & Myers Tobacco Company, Durham, North Carolina.

Separate meetings were conducted with the concerned parties in Durham, N. C. on December 15, 1964, and January 6, 1965. By that time, it was the opinion of the Consultant that disputed matters of fact could be resolved only by a confrontation of witnesses at joint meetings. This procedure, with the Consultant to act as chairman, was accepted by representatives of the Company, the Tobacco Workers International Union, and Local 176 (Durham), 177 (Richmond), and 208 (Durham) of the International. It was

understood that counsel for the International Union would attend all joint meetings as scheduled, and would participate as an observer. Representatives of the Department of Defense, the Defense Supply Agency, and the Civil Rights Department of the AFL-CIO also agreed to attend. Mr. Robert Hobson of the President's Committee staff was assigned by the Executive Director of the Committee to work with the Consultant and the parties during the course of the investigation.

Notice was given to all of the concerned parties of meetings which were convened in Durham on February 8, May 3-4, June 1-2, July 27-28, August 26-27, and September 27-29, 1965. There was representation by counsel, and full opportunity was afforded for the presentation of arguments and for the testimony of witnesses. The record consists of 1,195 pages of transcript, and some 45 supporting exhibits. Briefs were received from the parties on February 7, 1965. An amicus brief was filed by counsel for the International Union. In his brief, the latter suggested that the question of jurisdiction continues to be a matter of grave concern which ultimately could be controlling. In their briefs, counsel for Locals 176-177 and for the Company specifically did not waive contentions respecting jurisdiction of the President's Committee and its successor, the Office of Contract Compliance of the U. S. Department of Labor.

Basically, these contentions were precipitated by the announcing at the meeting in Durham on September 27 that there had been issued on September 24 Executive Order 11246, which

replaced Executive Order 10925, and abolished the President's Committee on Equal Employment Opportunity. For the purposes of this Report and Recommendations, all references to the Executive Order will be to Executive Order 10925 and to the Successor Order, 11246, depending on the point in time involved.

At the time, counsel for Liggett & Myers said:

> I am raising the question as to whether Mr. Haughton can do anything more in view of this new order than make a determination of compliance or non-compliance. I question whether he has the authority or whether the Secretary can delegate authority to him under the Executive Order to make any kind of recommendation, suggestion, or indication as to what he considers compliance or non-compliance. [Sept. 27-29 tr. p.36)]

Shortly after making this statement, the following question was put to Company counsel by the Consultant:

> Well, my desire is to continue this investigation, but if any one party wants to get a formal ruling on this appeal type basis before continuing and flatly states that he does not intend to continue until that avenue has been exhausted, I would accord that right. I am here to conduct the investigation. Will you continue with it or do you decline, Mr. Sturges? [Sept. 27-29 tr. p.45]

Counsel replied as follows:

> Well, the Company is not going to ask at this time for an adjournment of this meeting to present its appeal to the Secretary of Labor; however, we are reserving our right to effect an appeal on this jurisdictional question. Further, we assume that if this matter is still pending before you on October 24th, 1964, you will ask for and receive from the Secretary of Labor some statement of your jurisdiction to determine compliance or non compliance and will also conduct further hearings, investigative hearings, if the procedure set forth by the Secretary of Labor or the standard set forth by him and the rules and regulations to be issued under the new Executive Order so indicate. [Sept. 27-29 tr. p.46]

Counsel for Local 176 and 177 made the following statement shortly after the remarks by Company counsel had been completed.

> Having made that statement, let me go on to say from a procedural standpoint, that while Local 176 and 177 will, for the time being, continue to particpate in the investigation which you are now conducting, we do so with the explicit understanding that we do not in any way waive any jurisdictional rights that we have, nor do we by proceeding condone any proceedings which may ultimately or subsequently be found to be lacking in jurisdiction.
>
> In other words, by proceeding here, we are not to be taken to ratify that which may ultimately held to be illegal. What I want to preserve is the fact that we cannot later be said to have ratified something here which we had a right to appeal, and because we didn't interrupt these proceedings and take an immediate appeal we have been held to condone what would have been held to be illegal had we appealed. [Sept. 27-29, tr.p.50]

There then ensued the following exchange between the Consultant and Counsel for the International Union:

> MR. CARROLL: "As an observer, I suppose I cannot take as wide an objection to this matter as the parties. I do say that you have got a question here that has to be resolved. It has to be resolved by somebody. My concern is that I would hate...to see the question apparently resolved, or at least answered by some Government body and that there be a jurisdictional error that would permit one of the dissatisfied parties to then challenge the validity of any decision made. So, to the extent that any question before this might be upset, I just say let's have this jurisdictional question resolved, period."
>
> MR. HAUGHTON:"You would like to see it resolved as quickly as possible?"
>
> MR. CARROLL: "That is right, but I think this proceeding should go ahead."

As can be seen from the above-quoted excerpts from the transcript, there was agreement that the proceedings would continue without any waiver of jurisdictional claims. Meanwhile, by letter of November 26, 1965, the Consultant was informed by Mr. Edward C. Sylvester, Jr., Director of the Contract Compliance

Office, that:

> The responsibility formerly held by the Committee [President's Committee on Equal Employment Opportunity] for the Liggett & Myers Tobacco case has now been transferred to this office. We will anticipate your report of findings and recommendations on the date originally scheduled.

The parties were advised by the Consultant of Mr. Sylvester's ruling under date of December 6.

This Report and Recommendations has been prepared in response to Mr. Sylvester's letter. To the extent the parties wish to press the matter of jurisdiction further, it is suggested that they incorporate their contentions in their comments on this document. Such contentions will then be forwarded by the Consultant for a formal ruling by the United States Department of Labor.

The procedure announced on the record by the Consultant was that he would consider all of the material submitted to him, and that he would prepare a report and recommendations to the President's Committee on Equal Employment Opportunity. It was stated that such report and recommendations would consider the various complaints which had been filed with the President's Committee and the matter of whether or not they establish violation of the provisions of Executive Order 10925. It was also understood that copies of the Report and Recommendations would be sent to the parties for comment before they would be transmitted to the Committee. Finally, it was stated that the Report and Recommendations, which may or may not be changed after receipt of exceptions, plus the exceptions, will be transmitted by the Consultant

to the Office of Federal Contract Compliance as the successor to the President's Committee (July 27-28 tr. p.110)

In the matter of the approach to be taken in formulating the recommendations, the Consultant concurs with the suggestion made by Mr. Charles Smith, a representative of the Department of Defense, not contested by the parties at the time it was made, that if there should be a conclusion that Liggett & Myers is not in compliance with the Executive Order, then the Consultant "would be charged with the responsibility of pointing out the areas of non-compliance in [his] capacity as a consultant." Mr. Smith continued by saying that he believed that if the Consultant should find that Liggett & Myers is not in compliance with the Executive Order, he is required "not only to recognize the areas of non-compliance, but that in [his] affirmative capacity as a consultant, [he] come up with some concrete ideas and recommendations to eliminate the areas of non-compliance..." (June 1-2, tr. p.163).

Upon a question being raised by counsel for the International Union, the Consultant made it clear that "the Contract that governs the collective bargaining relationship between the parties can be consummated only by the parties." (June 1-2, tr. p.165).

The Consultant gave formal notice to the parties during the course of the meetings that complaints filed with the President's Committee by Local 208 in October, 1961, in behalf of some 35 individuals, and in its own name, alleging discrimination in

to the Office of Federal Contract Compliance as the successor to the President's Committee (July 27-28 tr. p.110)

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The Consultant gave formal notice to the parties during the course of the meetings that complaints filed with the President's Committee by Local 208 in October, 1961, in behalf of some 35 individuals, and in its own name, alleging discrimination in

employment opportunities because of race, creed, color and national origin, and contending discrimination because of segregated plant facilities, were still outstanding in the Committee's files. Similar comment was made with respect to complaints filed under date of November 20, 1963, and October 19 and 24, 1964.

The November 20 complaints, not filed on formal individual complaint forms, alleged that the downgrading of some 27 negro employees during the period of October 3 through November 18, 1963, and their replacement by white employees was a violation of the Executive Order.

The complaints attached to letters of October 19 and 23 from the Counsel for Local 208 specifically complained about Article 17 as follows:

1. October 19, 1964
   That the collective bargaining contract between Liggett & Myers and its employees perpetuates dual lines of seniority, discriminating against Negroes soley [sic] because of their race and color, by freezing seniority rights of Negroes as of 8th May, 1962, a date on which all parties to this dispute agree that dual lines of seniority, segregation, and discrimination against Negroes in regard to their seniority rights existed at the Liggett & Myers plant. This "grandfather clause", Article 17, is as attached.

2. October 23, 1964 (The covering letter for the two identical complaints of this date, which were signed by a total of 24 individual employees referred to them as "members of Local 194.*)

   By reason of our race we are discriminated against in that the presently subsisting collective bargaining

* *On the basis of the record here considered there no longer is a Local 194. It has been merged with Local 176. Any questions regarding this point would necessarily have to be taken up with another agency.*

contract between Liggett & Myers and its employees contains a discriminatory provision, to wit, Article 17, a copy of which is attached herewith.

While this Article on its face makes no mention of race or color, the effect is to freeze Negro employees in the low paying, menial jobs which were held by them as members of a segregated Negro local, Local 194, on the 8th of May, 1962. This "grandfather clause" was negotiated by the all-white negotiating committee of Local 176, majority union at Liggett & Myers, which is recognized by Liggett & Myers as exclusive bargaining representative for its Durham Plant.

If this clause is not repealed, given the automation and shrinking absolute number of jobs in the tobacco industry, Negro employees who are now old and middle aged men and who have years and years of seniority in segregated locals, will find themselves cut off while young, recently hired white employees will retain their places in the tobacco industry.

We, Negro employees of Liggett & Myers, former and present members of Local 194, respectfully petition the President's Committee for relief from this discrimination.

Article 17, as it is contained in the current collective bargaining agreement, which covers both the Durham and Richmond* plants is in full force and effect until May 15, 1966, with an automatic renewal clause unless either party gives notice of desired changes, as provided, reads as follows:**

** While the same contract covers both the Durham and Richmond plants, no complaints have been filed relating to Richmond. In fact, counsel for Local 208 specifically contended that "we are not concerned with the Richmond Plant." (tr. May 3-4, p.60). Although it was objected to by Local 208 counsel, the Consultant accepted evidence regarding the effect of Article 17 at Richmond. In his opening statement, Counsel for Liggett & Myers, while suggesting that, on the evidence, there can be no doubt that Article 17 has afforded equal employment opportunities, said that "As to the application of Article 17, we do not think that you can divorce Richmond from Durham." (Sept. 27-29 tr. p.108)*

*** There is considerable collective bargaining history regarding Article 17. However, it is not necessary to repeat it in detail. It is sufficient to say that, while there is some conflicting*

ARTICLE 17. When, because of lack of work, it becomes necessary to reduce employment, those workers who were last employed shall be released in order of seniority. When, thereafter, reemployment takes place, the employees who were last released shall be first reemployed and no new workers engaged until the list of former employees is exhausted. Should the Company or Union wish special consideration given a worker which would be an exception to this rule, this shall be taken up in conference with the Company and the Shop Committee.

New employees of the Company shall be considered probationary employees until they shall have been in the employ of the Company for three months. After they have been in the employ for three months, they shall cease to be probationary employees and shall be entered for seniority and shall rank for seniority from the date of their original hiring in the plant. There shall be no seniority among probationary employees. Any employee previously discharged for due cause and later reemployed shall forfeit his or her seniority rights.

evidence, the substance of the article was negotiated on May 8, 1962, as a supplement to the then-established collective bargaining contract. It was then formally included in the contract when a new agreement was negotiated in March of 1963. To this point, Local 208 was involved in the negotiations as a part of a five-local Allied Shop Committee. Even assuming it was dissatisfied with what was negotiated (see letter of May 14, 1962, from Walter O. Daye, President, Local 208, to the Manager of Liggett & Myers Tobacco Company, Durham, wherein he stated that, "The proposal [May 8, 1962] submitted by the company did not meet the approval of the membership and by vote the membership of Local 208 rejected said proposal and authorized me to notify you of their action," [May 3-4 tr. p.203] it apparently believed itself bound by a majority rule. Therefore, the 1963 contract, which includes Article 17 in substantially the same form as it appears in the current contract, which was effective March 15, 1965, was signed by the President of Local 208. For reasons not before this Consultant, Local 208 was not involved as a participant in the 1964 and 1965 negotiations. On advice of counsel, the Company bargained during those years with Local 177 (Richmond) and Local 176 (Durham) as representatives of all employees at Richmond and Durham who are represented by the Tobacco Workers International Union. The indications are that this was because Local 208, not having merged with Local 176, as had the previously all-Negro Local 194, was regarded as a segregated Negro local. The Company had apparently been informed that, as a contractor, it would remain in non-compliance with the Executive Order as long as it continued to bargain and deal with locals which were racially identifiable in structure. Meanwhile, unfair labor practice charges have been filed/against the Company by Local 208. with the National Labor Relations Board

An employee shall cease to have seniority rights if--

(a) He or she quits.
(b) He or she is discharged.
(c) He or she is absent for seven working days without notifying the Company.
(d) He or she does not return to work when called.

In compliance with the Presidential Directive, namely Executive Order 10925 and at the request of the General Service Administration of the Federal Government, our employment and promotional practices will be as follows:

All employees who had seniority on May 8, 1962, both then employed and on temporary layoff, will retain all seniority rights that were theirs on that date.

After honoring these rights, employees will be eligible for promotion to all jobs in accordance with seniority based solely on qualifications and merit without respect to race, color, creed or national origin and shall rank for seniority on those jobs that heretofore (prior to May 8, 1962) they had no seniority rights to as of the date they are transferred. Should these employees be demoted for any reason they will return to jobs to which they are entitled with seniority rights unimpaired.

New employees (those employed after May 8, 1962) will be hired on a qualification and merit basis without discrimination against any applicant because of race, color, creed or national origin. Promotions for new employees will be in accordance with seniority based on qualification and merit after all present qualified employees have had the opportunity for promotions to these jobs. In case of layoff, all new employees will be terminated in accordance with their plant seniority.

In filling vacancies and in making promotions, everything else being equal (qualifications shall be adjudged by management and shop committee), preference shall be given in accordance with seniority, however, when an employee hired prior to May 8, 1962, is considered for a job to which he had no seniority rights prior to that date, it will be the function of management alone to adjudge his qualifications. Recommendations by the local shop committee will be given full consideration.

For the purpose of executing this article Richmond and Durham will be handled as separate units.

The Consultant has carefully considered the individual employee complaints and the evidence relating thereto, filed in October, 1961, and in November, 1963. He has concluded, however, that since Local 208, with the availability of a very open record, has presented virtually no objective evidence on the matter of complaints by individuals, the recommendation will be that such individual complaints be closed upon the resolution of the basic issue relating to the application of Article 17. It is noted in passing that the brief for Local 208 contained nothing on the matter of such complaints. In the Consultant's opinion, it quite properly addressed itself to the basic issue of the meaning and application of Article 17.

The fact is, it is clear from the transcript and from the briefs that it has been generally recognized by all concerned that the live issue to be decided is whether Article 17, as it has appeared in substance in all of the collective bargaining contracts since 1963, is discriminatory on its face, or in its application.

The Consultant can report that he finds that on the evidence, the October, 1961, complaints relating to facilities have been satisfactorily resolved. At the meeting on May 4, he appointed

the presidents of Locals 176 and 208 to investigate and report jointly on the matter (May 3-4 tr. p.234). After making such investigation, they reported back as follows:

> At your request, we made an inspection of all Liggett & Myers facilities in the Durham plant and found there were no discrimination signs on:
>
> Rest Rooms
> Water Fountains
> Cafeterias
> Locker Rooms -- on second, third, and fourth floors, having more than one men locker room, each room is numbered.

On this report (Consultant's Exhibit 20) and on other relevant evidence, the Consultant stated that it was his finding that there remained no problem regarding facilities, and that he would include such finding in his report and recommendations. (June 1-2 tr. pp.146-147; Aug. 26-27 tr. p.114; Sept. 27-29 tr. p.182).

A great deal of evidence was presented on the matter of whether or not the representatives of the Government have already approved Article 17 as being in compliance with the Executive Order.* However, it would serve no good purpose to repeat it in detail. It is sufficient to say that the agency with the final responsibility, the President's Committee on Equal Employment Opportunity, never has issued a formal finding that Article 17, in its language or application, is or is not in complaince with the Executive Order. Neither has the successor agency, the Office of Federal Contract Compliance taken any formal action other than that noted on page 5 above.

* *The Consultant denied a request of the Company that a number of named staff members of the President's Committee testify at the investigation. (July 27-28 tr. pp.101-102)*

The definitive written statement of the Committee's position is contained in a letter of January 3, 1963, (Consultant Exhibit 6) from Mr. John G. Feild, then Executive Director of the Committee, to Mr. L. D. Thompson, Vice President of Liggett & Myers. Mr. Feild said, in part:

> I wish to correct a statement made in your letter indicating that I have "on occasions confirmed that our Company is in compliance with the Executive Order." My judgment of the status of employment opportunities in the Durham plant has been that when an appropriate change in the seniority provisions of the existing labor-management agreement between your company and Tobacco Workers becomes operative, the Committee would be able to accept your compliance program. Further, it would be our expectation that effects of any change that is worked out should be reviewed within a reasonable time in order to determine that they are accomplishing the purpose intended. I have, of course, on several occasions expressed our gratification of the excellent cooperation you and other officials of Liggett & Myers have been extending the Committee in attempting to work out an equitable solution to these problems.

As for the matter of the findings made by General Services Adminstration, and later by the Defense Supply Agency, these simply were internal reports by these agencies made in fulfillment of their primary responsibility to the President's Committee. In the words of Mr. Charles Smith of the Defense Department, "...it was then up to the President's Committee to evaluate, accept or reject this review, report, and give whatever further direction they felt proper..." (Sept. 27-29 tr. p.267). An indication that Compliance Reports submitted to the President's Committee by the agency having primary interest (Defense Supply in this case) are not necessarily to be regarded as a final

determination is to be adduced from a remark by Mr. Smith wherein he noted that according to the testimony at the investigation of General Manager of the Durham operation, Mr. Edgar M. Waller, all of the comments suggesting affirmative corrective action contained in the December 30, 1963, D.S.A. Special Compliance Review (the reference was to only one comment) were not accurate. (Sept. 27-29 tr. p.261).

With the aid of an unusually complete record, which will be sent in toto to the Office of Federal Contract Compliance by the Consultant, we are now in a position to report on the matter of the application and effect of Article 17, and to recommend, in the same spirit as did the Defense Supply Agency to the President's Committee in the past, corrective action determined to be required in order to accomplish compliance with the terms of the Executive Order.

It is suggested that the language of Article 17 is not discriminatory on its face. Given conditions where race is not involved, this type of language is not unusual in American industrial relations practice, when the parties wish to provide for the merger of what theretofore were separate seniority units. As counsel for the International Union noted in his amicus brief, seniority, by its very nature and its definition, is discriminatory in that it provides preferential treatment for some employees at the expense of others. On this point, the only question with which we are concerned here is: Does Article 17 provide preferential treatment to one group of employees at the expense of another on the basis of race?

On the matter of the acceptance in 1962 and 1963 by Local 208 of the substance of Article 17 as it now governs the relationships between the parties, in the particular circumstances of this case, such acceptance cannot be regarded as controlling of whether or not there is compliance. If the effect of Article 17 were to be in non-compliance, this situation would not change simply because Local 208 agreed to the article in 1962 and 1963. Mr. Feild made it clear in his letter of January 3, 1963, to the Vice President of the Company that the effects of any change [which was negotiated] should be reviewed within a reasonable time in order to determine that they are accomplishing the purpose intended. (Consultant's Exhibit 6).

The complexities of the problem have been such that a review has not been accomplished as expeditiously as Mr. Feild hoped. The Consultant is conscious of this fact, and will weigh it so as to protect the Company against any damaging retroactive relief to the complaining party. This has been, in effect, a de novo investigation, and it is recommended that relief, if any, should date from the time of the formal finding of the concerned Government agency, which is now the Office of Federal Contract Compliance.

After careful analysis of the entire record and of the excellently prepared briefs, the Consultant concludes that the application of Article 17 is to discriminate against certain Liggett & Myers employees during employment because of race. In coming to this conclusion, the Consultant has not regarded as

controlling the absolute number of Negro employees who have been upgraded into former all-white jobs at Durham. The important point to be decided has been whether or not Article 17 has continued what were discriminatory employment conditions existing prior to May 8, 1962.*

What Article 17 provides, in fact, is for a segregated pattern of employment, both for promotions and for reductions in force, whenever there is occasion to exercise seniority acquired on or before May 8, 1962. The Consultant finds this continuation of a prior existing racially discriminatory situation to be a violation of the equal employment opportunity provisions of the Executive Order.

Negro employees, regardless of date of hire by Liggett & Myers before May 9, 1962, are considered for promotion to generally higher-paid machine jobs in the old Local 176 line of progression only after white employees hired on or before May 8, 1962. If is up to and including the latter date that white employees hired prior to May 9, 1962, have super seniority, without regard to any particular date-of-hire which might precede it. On reductions from jobs in what we will refer to here as the old 176 line of progression, white employees who have been hired on or before May 8, 1962, also exercise super seniority over Negroes

* *See testimony on cross-examination of Local 176 witness, U. C. Wells, which shows that, while there never has been any reference to color in the charters issued by the International Union (and there is no inference here that a segregated approach was even suggested by the International) the fact is that the jurisdiction of the various locals in Durham was by color. (July 27-28 tr. pp.35-36).*

who have advanced to such jobs, regardless of when such employees might have been hired by Liggett & Myers prior to May 9, 1962.

At a point when a white employee is subject to layoff from a bottom job in the old 176 line of progression, the May 8, 1962, date works also to discriminate against him because of a previously-existing racially segregated employment pattern. Amongst employees hired on or before May 8, 1962, who happen to be working in a job in the old 176 jurisdiction, as a matter of contract, only Negroes can bump on down into jobs which were in the old Local 194 and 208 jurisdictions, regardless of the Liggett & Myers date-of-hire of white employees who were hired into the old 176 jurisdiction prior to May 9, 1962. The reason for this is that before May 9, only Negroes were hired into 194 and 208 jobs.

It is noted that Local 208 has not suggested that any merging of seniority dates for Liggett & Myers employees which might be accomplished should result in "pulling" shorter service Liggett & Myers employees from jobs they already occupy. Neither does the Consultant. He finds, further, that it would be inappropriate to require that a white employee with senior Liggett & Myers service be allowed to claim as a promotion a higher-paid job held in accordance with the application of the existing collective bargaining agreement by a Negro employee in a former 194 or 208 bargaining unit jurisdiction.

Local 208 suggests that there be what, in effect, would be open competition for promotions into higher-paid machine jobs in accordance with qualifications and Liggett

& Myers date of hire. As long as the established lines of progression for jobs either in the old 176 or in the 194 or 208 jurisdictions are recognized, the Consultant recommends that this open-competition approach be extended so that it be available with respect to all vacancies in any of the formerly established bargaining units. Thus, senior employees, albeit being restricted to bidding up a line of progression one job at a time, would not be restricted to bidding on vacancies as they might occur in any of the former units.

It would be inappropriate to disregard what are found by the Consultant to be established lines of progression on machine jobs by suggesting that either white or negro employees must have the right to jump over particular jobs in such line. The finding is that compliance with the Executive Order does not require such a procedure. Similarly, to the extent there are established lines of progression in the old 194 and 208 jurisdictions, there should be no right to jump over particular jobs.

In view of all of the foregoing, the Consultant recommends that the corrective action required of the contractor in the matter of upgrading should be to allow all employees in the bargaining unit now represented by Local 176* (Even though there are outstanding with the N. L. R. B. unfair labor practice charges regarding the matter of representation for Local 208 and its members, this currently includes the Local 208 and former Local 194 memberships)

** It is recognized that given the collective bargaining arrangement between Liggett & Myers and Local Unions at Durham and Richmond, a change in the contract as it applies at Durham would have equal effect at Richmond, unless the parties should desire to provide otherwise.*

to be eligible for consideration for promotion to vacancies in the machine line of progression in accordance with their date of hire by Liggett & Myers, based solely on qualifications and merit. To accomplish compliance with the Executive Order, this approach should not be limited to higher-paid job vacancies in the former all-white local jurisdiction. To the extent that higher-paid jobs in the former jurisdiction of Local 194 and 208 are not in established lines of progression, lower-paid white employees should be eligible for promotions to such jobs in accordance with seniority based on qualifications and merit.

The present contract right of Negro employees (Local 208 members and former 194 members hired on or before May 8, 1962) upgraded into former Local 176 jobs to bump back into their former jurisdiction on cutbacks of 176 jobs has already been discussed above. This right is found by the Consultant to be a discriminatory one as long as it is enjoyed only by Negroes hired prior to May 9, 1962. Compliance with the Executive Order would require the accordance of the same right on the basis of seniority and qualifications to Local 176 white employees who were hired prior to May 9, 1962. A continuation of the present approach would countenance separate lines of seniority for white and negro employees hired prior to May 9, 1962. This would be contrary to the terms of the Executive Order.

While the above suggested corrective actions necessary for compliance with the Executive Order would be new to the Liggett & Myers operation, the principles are comparable to collectively

bargained seniority arrangements which have been agreed to by the Brown & Williamson Tobacco Company and Local Union No. 188 of the same International Union as is involved here. (June 1-2 tr. p.89-100).

A final point which must be considered regarding upgrading relates to a matter which was treated in the DSA report of December 30, 1963. It was there determined that amongst affirmative corrective actions to be required by the contractor was the following:

> e. The practice of automatically passing over, in advancement actions, employees in a lower job classification, who are receiving a rate of pay higher than that of the entrance rate in the higher job classification, creates a barrier to equitable employee progression. This practice should be discontinued.*

The above-mentioned suggestion was answered by Durham General Manager Waller in these proceedings by his stating that under the contract, it has always been considered a promotion if there is an increase in pay, even if the entry rate of the job is lower than the rate an employee moving onto such job currently is carrying. He testified that as early as the 1963 negotiations, he explained to all concerned that it had been the practice in the past, and that all people would be paid for the jobs they were on, and it would be necessary for some employees to take a pay cut in order to get in line for operating jobs leading to the

* *See Consultant Exhibit 18-A, Report on Special Compliance Review Liggett & Myers Tobacco Company, Durham, North Carolina, 30 December 1963, p.13)*

highest-paid jobs in the factory (Sept. 27-29 tr. p.120). He added that Article 10 of the 1962 Agreement, which has been continued up to the present time, makes this procedure a contractual matter. Article 10 provides as follows:

> When an employee has been transferred to another job and remains on the other job for five days, his or her rate of pay will be increased or decreased to conform to the rate of pay on the job to which he or she has been transferred.

The Consultant finds that there is no question but that practice under Article 17 and under Article 10 of the collective bargaining agreement has been to require employees in higher-rated jobs to take a cut when entering at the bottom of what we can refer to as the "machine line of progression." However, in the circusmtances we are considering here, the finding is that to require an employee to take a reduction before he can take advantage of non-discriminatory employment opportunities does not give him the equal opportunity required by the Executive Order. Just as it is not fair to penalize white employees by suggesting that they be pulled from jobs by senior Liggett & Myers service Negroes desiring the promotion, it also would be unfair to suggest that long-service Negro employees, who have progressed into all-Negro jobs in the 194-208 units above the $2.33 rate, take a cut in pay before being able to exercise their right to equal promotional opportunities. Except for some 20 employees at Durham and 15 employees at Richmond who were chosen by Management to go into old Local 176 jurisdiction jobs from 1956

to 1958 (Sept. 27-29 tr. p.111), the opportunity to progress in the machine line of progression was closed in the past to Negro employees hired by Liggett & Myers on or before May 8, 1962. In the particular circumstances of this case, it would now be inappropriate to penalize them by requiring a rate cut because of an earlier circumstance over which they had no control.

It is noted that the effect of requiring Negro employees to take a wage cut in order to enter the machine line of progression would be to penalize them for a considerable period. The evidence is that in recent years, it has taken an elapsed time of from two to seven years for an employee to accumulate the 240 days' service in the $2.56 former 176 machine jobs necessary to acquire the full rate (June 1-2 tr. pp.180 & 111). It is emphasized that the reference to 240 days, and to the expectation of two to seven years to accumulate such service is not to suggest that the Consultant had made any value judgment with respect to the necessity for 240 days' training. This was not an issue in this case. This qualifying period has been negotiated in free collective bargaining, both at Liggett & Myers and in the industry generally. (June 1-2, tr. p.125).

The fact that some five watchmen who had progressed up from $2.33 to $2.56 in the Local 176 unit elected to take wage cuts to start at the $2.33 line of progression in the machine jobs is not relevant to the above finding. The guards were not discriminated against because of race on or before May 8, 1962. Rather, they had an opportunity to make an election to either go through

the machine line of progression or to take a quicker wage increase in the dead-ended job of watchman. Such a choice, however, was not available to Local 194 and 208 employees.

In summary, because of the particular circumstances under consideration here, the Consultant finds that corrective action to ensure equal employment opportunity at the Liggett & Myers Company, without regard to race, creed, color, or national origin requires that employees who have progressed in former Locals 194 and 208 jobs beyond the minimum $2.33 an hour for the entry job in the machine line of progression should not be required to take a cut in pay upon taking such an entry job. It is recommended, instead, that the appropriate remedy for compliance with the equal employment opportunity provisions of the Executive Order is that Negro employees who have sufficient Liggett & Myers seniority to enable them to bid on and to obtain a $2.33 machine entry job be allowed to carry their current rate on what was formerly an exclusively Negro job into the machine line of progression. This would not damage white employees, and would not apply a financial penalty against the Negro employee for taking advantage of an employment opportunity. It would vitiate the intent of the basic recommendations being made here if Negro employees are required to take a wage cut to enter a line of progression previously closed to them, and are then required to spend two to seven years to reach the full job machine rate of $2.56 per hour.

At this point it is necessary to mention the 5 to 13 employees out of the former Local 194-208 jurisdiction who have

already moved at a cut in rate to the old 176 line of progression (Sept. 27-29 tr. pp. 133 & 198). While the Consultant does not recommend that these be given any relief in the form of retroactive pay for the rate differential involved, he does recommend that the differential be made up if and when the former 194 and 208 employees are given the right to move into the old 176 jurisdiction without a wage cut. Such action should be effective at such time as the procedure may be instituted.

While it is appropriate to allow a Negro employee in a former 194-208 job to carry his per-hour rate into a machine job, it would be inappropriate on the issues and record before us to make any finding relative to the propriety of the qualifying requirement of 240 days' service in order to reach a point where payment of the full rate for the job is normally required. Further, in the absence of an agreement to give service credit on one line for work performed on another, in the carrying over of rates from the former all-Negro bargaining units to machine jobs at the start of the machine line of progression, it would be inappropriate to allow anything over $2.56, the full rate for the first machine job. In the circumstances, it is the Consultant's recommendation that if any of the some nineteen 208 employees currently receiving over $2.56 per hour should move to fill a machine vacancy in the $2.56 classification, he should be paid no more than $2.56. Thus, because of the particular circumstances, a nominal wage cut back to the $2.56 top rate for the machine work would be required.

The Consultant notes that he agrees with counsel for the International Union that he has no right to concern himself with

the internal affairs of the Union, and that it would be improper under the terms of the Executive Order to instruct the parties as to what they must include in their collective bargaining contract. The fact is, as the Executive Order is written, the parties have a right to continue their contract unless they mutually agree to change it. The question here simply is: Do they wish to continue their contract as written, with the possibility of economic loss because of non-compliance with the Executive Order, or do they wish to change their contract to accomplish compliance as they made a good faith attempt to do as early as May 8, 1962?

Finally, while the Executive Order does not differentiate between retroactive and current corrective action to ensure that employees are treated equally during employment without regard to their race, creed, color,or national origin, this matter has been raised so pointedly by counsel for Locals 176-177 in his brief that it is necessary for the Consultant to state that he has considered it carefully. Generally, the legislative history with reference to Title VII of the Civil Rights Act of 1964, referred to by Local 208 counsel appears to have concerned itself with matters of new hires. Thus, there is the reference on page 39 of the Locals 176-177 brief to a memorandum interpreting the House-approved Bill which was introduced by the bipartisan floor leadership of Senators Clark and Case. The interpretation states that if a business has been discriminating in the past, and as a result has an all-white working force, when Title VII came into effect, such employer's obligation would simply be to fill future

vacancies on a non-discriminatory basis. "He would not be obliged --indeed, permitted--to fire whites in order to hire Negroes, or to prefer Negroes for future vacancies, or, once Negores are hired, to give them special seniority rights at the expense of the white workers hired earlier."

A statement from the April 8, 1964, CONGRESSIONAL RECORD referred to on page 39 of the Locals 176-177 brief that, "The bill is not retroactive, and it will not require an employer to change existing seniority lists," is a general one, and is not regarded in the particular context of the fact situation of the instant case as prohibiting a requirement that equal opportunity in employmnet conditions be given without regard to race for all employees of Liggett & Myers at Durham, based on their date of hire by the Company.

The fact is, in the particular circumstances of this case, the corrective action required of the contractor in Section 301 of Executive Order 10925 (Section 202 of Successor Order 11246) to ensure that employees are treated during employment without regard to their race, creed, color, or national origin cannot be effective if a junior white employee, hired by Liggett & Myers in Durham prior to May 9, 1962, because of his qualifications and race, has what is, in effect, super seniority over longer Liggett & Myers service Negro employees hired because of qualifications and race into all-Negro bargaining units on or before May 8, 1962. The same conclusion applies if Negro employees hired on or

before May 8, 1962, have super seniority in certain jobs over all white employees hired before the same date. It basic purpose of the Executive Order would be defeated if there were to be a continuation of the discriminatory pattern of employment which existed prior to May 9, 1962. It is repeated that the finding is that the effect of Article 17 is to continue such pattern.

SUMMARY OF RECOMMENDATIONS

After careful consideration of the entire record before him, and of the briefs which have been presented to him, the Consultant recommends that the Office of Federal Contract Compliance of the United States Department of Labor, as the successor to the President's Committee on Equal Employment Opportunity, find that, except for employees not being subject to being pulled from jobs as noted above, compliance with the Executive Order requires that

1. no super seniority be exercised by any employees of the Company against any other employees simply because of the circumstance that they were hired into a particular Local Union jurisdiction on or before May 8, 1962.*

It is recommended that the Office of Federal Contract Compliance find that the Liggett & Myers Tobacco Company is in com-

2. pliance with the Executive Order regarding the October, 1961, complaint alleging segregated water fountains, rest-room facilities, and the cafeteria. It is further recommended that except for the complaints filed under date of October 19 and 23, 1964, by individual employees, which relate specifically to the application of Article 17 of the collective bargaining agreement, the complaints filed for individual employees by Local 208 or its counsel in Octo-

3. ber, 1961 and in November, 1963, be closed upon the resolution of the basic issue relating to the application of Article 17.

* *This in no way is to be interpreted to allow new hires who are Negroes to bump already-hired white employees. It simply suggests that date-of-hire with Liggett & Myers is the significant seniority date.*

The effectuation of the above recommendations would require that the Company take the corrective actions listed below in order to be in compliance with the non-discrimination obligation required of a Federal contractor:

1. Act to ensure that all of its employees at Durham are treated during employment, without regard to their race, creed, color, or national origin. This means that no seniority should be exercised by any employee of the Company against any other employee on the basis of rights acquired because of the racial employment pattern which existed on or before May 8, 1962.

   (a) Promotions to vacancies in what was the old Local 176 machine line of progression jurisdiction, starting with the bottom $2.33 entry job, should be in accordance with Company date of hire, based solely on qualifications and merit. The same procedure should apply to promotions to vacancies not in the line of progression.

   (b) Promotions to vacancies in what were the old Locals 194 and 208 jurisdictions, starting with the entry job to the extent that there are established lines of progression, should be in accordance with Company date of hire, based solely on qualifications and merit. The same procedure should apply to promotions to vacancies not in any established line of progression.

(c) On promotions, employees need not be permitted as a matter of contract right to jump over jobs in an established line of progression.

(d) On promotions, employees hired by Liggett & Myers on or before May 8, 1962, should not be subject to being pulled from jobs on which they are working by senior employees who also were hired on or before May 8, 1962.

(e) On reductions in employment because of lack of work, employees from the former Locals 194 and 208 jurisdictions who are working on jobs in the old 176 jurisdiction should be given the right to exercise their Liggett & Myers date-of-hire seniority. Similarly, employees from the former Local 176 jurisdiction should be given the right to exercise their Liggett & Myers date-of-hire seniority against available jobs in the old Locals 194 and 208 jurisdictions, as well as in the former 176 bargaining unit.

2. Act to ensure that employees filling vacancies at the bottom of the machine line of progression from the former 194 or 208 jurisdictions carry with them their rate already established or $2.56 per hour, whichever is the lesser.

Since the record is that the $2.33 jobs at the bottom of the machine line of progression are not necessarily regarded as training jobs for the machines, with respect to employees in former 194 or 208 jobs paying in excess of $2.33

per hour, the employer should be allowed (if parties so provide in the contract) to leave them on such jobs until they are ready to fill an actual opening on a machine, and to start accumulating time towards the $2.56 top rate. Any other approach would be an undue burden on the Company in that it presumably would have to fill the high-rated 194 or 208 job with a regular employee, and then allow the bidding employee to carry the full rate for the job into the botton $2.33 former 176 classification.

(a) No retroactive adjustment is recommended for employees who already have transferred over from the former 194 and 208 jurisdiction. It simply is recommended that such employees be given the same rate carry-over consideration which may be accorded in the future to former 176, 194, and 208 employees. Such carry-over is to apply when and if the Company decides to effectuate a procedure for rate carry-over for employees filling vacancies in higher-rated jobs for which they were not eligible on or before May 8, 1962.

April 8, 1966

Ronald W. Haughton
Ronald W. Haughton
Consultant

LOUISIANA - MISCELLANEOUS Legal Cases
1963-1968

Box 45
Folder 15

...ity of Wisconsin

Please Retain Original Order

Pertinent portion of Bill of Indictment on the Clinton People

relative to public intimidation, by the use of threats upon Joseph S. Felps, Mayor of the Town of Clinton, Louisiana, specifically by delivering or causing to be delivered to the said Joseph S. Felps, Mayor, by certified United States Mail, the following written communication, signed by the said Mattie Matthews to-wit:

Clinton, Louisiana
September 19, 1963

Joseph S. Felps
Mayor
East Feliciana Parish

Dear Sir:

We, the undersigned individuals and organizations of East Feliciana Parish, representing the Negroes of East Feliciana Parish, hereby submit this resolution to you as our elected public officials and appeal to you to commence taking initial steps to establish a bi-racial committee on community relations in order to avoid civil domestic disturbances of racial tension.

We further request that the committee be composed of any white citizens that you desire, however, we reserve the right to submit an equal number of Negro citizens to serve on such a committee. We respectfully suggest that the public officials to serve on the committee be composed of city concilmen, schoolboard members, police jury members and other elected leaders of both races for a careful consideration of the many problems facing our community.

Due to the pressing need of such a committee to establish meaningful, effective communications between all the citizens of our community we urgently request action on this resolution before September 26, 1963.

Respectfully submitted,

which said communication was delivered or caused to be delivered to the said Joseph S. Felps, Mayor, by the said Mattie Matthews with the intent by the said Mattie Matthews to influence the conduct of the said Joseph S. Felps in relation to his position and duty as Mayor of the Town of Clinton, Louisiana.

CITY OF WEST MONROE

PARISH OF OUACHITA

STATE OF LOUISIANA

CITY OF WEST MONROE

VS. AFFIDAVIT NO: _____

"""

MOTION AND ORDER OF APPEAL
TO THE 4TH JUDICIAL DISTRICT
COURT, STATE OF LOUISIANA

TO THE HONORABLE , ROBERT TASSIN,

JUDGE OF THE CITY COURT, WEST MONROE, LOUISIANA:

ON MOTION of Attorneys for defendant, _____, previously orally filed and submitted, and on suggesting to the Court that defendant intends to appeal the sentence and conviction as herein rendered by this Honorable Court, de nova, all pursuant to Louisiana law.

IT IS ORDERED that an appeal be granted in this matter, to the 4TH JUDICIAL DISTRICT COURT, PARISH OF OUACHITA, STATE OF LOUISIANA, all pursuant to law.

West Monroe, Louisiana, _____, 1964.

_____
JUDGE, CITY OF WEST MONROE

RESPECTFULLY SUBMITTED:

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 Dryades Street
New Orleans, Louisiana

_____

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

BY: _____
MURPHY W. BELL

TWENTIETH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

VS. NO. 4476

JAMES MATTHEWS FILED: 6/20/64

:: :: :: :

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally appeared:

_____

_____

who after being sworn deposed that:

They are well acquainted with James Matthews and know of their own knowledge that he is poor and unable to pay the cost of a transcript in order to protect his appellate rights. So help them God.

_____

_____

SWORN TO AND SUBSCRIBED BEFORE ME, this _____ day of May, 1964.

_____

NOTARY PUBLIC

June 26, 1964
Taken under advisement & continued w/o date

no plea as yet

CITY OF WEST MONROE

PARISH OF OUACHITA

STATE OF LOUISIANA

CITY OF WEST MONROE

VS. NUMBER: 17411 & 17412 (David P. Kramer)

MOTION TO QUASH

NOW INTO COURT, through undersigned counsel comes William John Yates, made defendant in the above entitled and numbered cause, and before arriagnment, movers to quash the Bill of Information or affidavit in the cause hereof, for the following reasons, to-wit:

1.

That the Bill of Information or affidavit on which defendant has been charged does not inform the defendant of which, if any, crimes he has committed under the laws of the State of Louisiana, because of vagueness and ambiguity.

2.

That in the alternative, if this Court finds that the defendant has been properly informed of the acts he is accused of committing, then only in the alternative the defendant avers that the pertinent statute or ordinance is unconstitutional on its face, in that it is vague in not setting forth specific criminal conduct with the requisite intent required by the law of the State of Louisiana, and more specifically, your mover is being deprived of his rights under Article I, sections 2, 10 and 11 of the constituation of the State of Louisiana, as will as those under the Fourteenth Amendment to the United States Constitution, because of the unconstitutional application of this law.

3.

That the statutes on which the prosecution is based and the Bill of Information founded thereon, fail to charge a punishable offense for want of allegation of active criminal intent and/or

specific intent.

4.

That the Bill of Information and the prosecution ensued thereon, are unconstitutional, because they violate the First Fifteenth and Fourteenth Amendments of the Constitution of the United States by depriving defendants of freedom of Assembly, freedom of speech, the right to vote, and equal protection of the laws.

WHEREFORE, defendant prays that this MOTION TO QUASH be maintained and that the Bill of Information or affidavit quashed, and that he be discharged therefrom.

MOVER further prays for all orders necessary, and for general and equitable relief.

Attorneys for Defendant:

ROBERT COLLINS
NILS DOUGLAS
LOLIS ELIE
2211 Dryades Street
New Orleans, Louisiana

OF COUNSEL:

CARL RACHLIN
280 BROADWAY
NEW YORK, NEW YORK

MURPHY W. BELL
971 South 13th Street
Baton Rouge, La.

BY: _____
MURPHY W. BELL

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared:

MURPHY W. BELL

who, after first being duly sworn did depose and say that he is one of the attorneys in the above matter and that he prepared the above and foregoing motion and that all the facts and allegations therein contained are true and correct to the best of his knowledge, information and belief.

_____
MURPHY W. BELL

SWORN TO AND SUBSCRIBED BEFORE ME, this _____ day of June, 1964.

_____
N O T A R Y P U B L I C

STATE OF LOUISIANA

VS.

Robert M. Hurwitt, W/M

Arthur Brooks, Jr., C/M
306 Ivey Street;
Plaquemine, La.

No. 6320-A

STATE OF LOUISIANA

PARISH OF WEST FELICIANA

Personally came and appeared before me, Edward Daniel

who, having been by me duly sworn, did depose and say: That one Robert M. Hurwitt and Arthur Brooks, Jr.

on the 2nd day of July, 1964, willfully and unlawfully Criminal trespass by being on private property of Edward Daniel and Jordan Truitt, without their consent

within this State and Parish, and the Jurisdiction of the Twentieth Judicial District Court, contrary to the form of the statutes of the State of Louisiana in such case made and provided, and against the peace and dignity of the same.

Wherefore, deponent prays that the said accused be arrested and dealt with according to law.

Edward Daniel

Sworn to and subscribed before me this 2nd day of July, 19 64

A. H. DeLaup Jr.
Justice of the Peace, 1st Ward, West Feliciana Parish.

TWENTIETH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

VS. NO. 4476

JAMES MATTEWS FILED: 7/9/64

.....

.....

.....

MOTION FOR A NEW TRIAL

NOW INTO COURT, through undersigned counsel comes James Matthews, the defendant in the above entitled and numbered cause and moves the Court that the judgment rendered herein be set aside and a new trial granted, for the following reason:

1.

There is no evidence to support the judgment, WHEREFORE, mover prays that this motion be granted and new trial be ordered in these proceddings.

By Attorney:

Murphy W. Bell
971 South 13th Street
Baton Rouge, Louisiana

AFFIDAVIT

Parish of East Baton

State of Louisiana

Before me, appeared Murphy W. Bell who after being sworn deposed:

That he prepared the foregoing motion and that all allegation are true.

_____
Murphy W. Bell

SWORN to and Subsuribed before me this _____day of July, 1964.

_____
NOTARY PUBLIC

ORDER

IT IS ORDERED that a new trial be granted in the above entitled and numbered case.

Clinton, Louisiana July _____ 1964

Judge John R. Rarick

File / East Feliciana July 1964

TWENTIETH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

VS.

CORRIE C. COLLINS

NO. B-4513

FILED: 7/10/64

.....

.....

MOTION TO QUASH

NOW INTO COURT, through undersigned counsel comes CORRIE C. COLLINS, made defendant in the above numbered cause, and protesting he is not guilty of the crime herein charged, begs leave of court to file and urge this motion to quash:

1.

That the Bill of Information is based upon an unconstitutional application of R.S. 14:99 all as shown as follows:

2.

Mover, Corrie C. Collins, a negro, chairman of the East Feliciana chapter of the Congress of Racial Equality Alleges, on information and belief that he has been and is being subjected to a pattern of intimidation and harrassment on the part of certain public officials, all because of his work in civil rights causes; that his arrest and detention in this matter was completely unwarranted and illegal all as will besshown on the trial of this motion; WHEREFORE, mover prays that a rule nisi issue commanding the District Attorney to show cause at a time certain why the Bill of Information in this matter should not be quashed.

For general and Equitable relief.

OF COUNSEL:
CARL RACHLIN, ESQ.
38 Park Row
New York 38, N.Y.

By: Attorneys:
Collins, Douglas & Elie
2211 Drgrades St.
New Orleans, La.

Murphy W. Bell
971 South 13th Street
Baton Rouge, La.

By _____
Murphy W. Bell

AFFIDAVIT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

Before me, appeared Murphy W. Bell who after being sworn deposed:

That he prepared the foregoing motion and that all allegations are true.

_____
Murphy W. Bell

SWORN to and Subsuribed before me this_____day of July, 1964.

_____
NOTARY PUBLIC

ORDER

LET the District Attorney, RICHARD KILBOURNE, ESQ. show cause on the_____ day of _____ 1964 why the Motion to Quash the Bill of Information should not be granted.

Clinton, Louisiana July_____1964.

_____
JUDGE JOHN R. RARICK

MINUTE ENTRY
ELLIS, FRANK B., J.
August 12, 1965

Sharon Lynne George, et als.

vs.

C. Walter Davis, President,
East Feliciana Parish School Board

Civil Action #3253

(Baton Rouge Division)

Pre-trial conference was this day held.

Appearances:

Murphy W. Bell, Nils R. Douglas, Richard B. Sobol, and Haskell A. Kassler for plaintiffs.

Harry J. Kron, Jr. and Richard Kilbourne for defendants.

IT IS ORDERED that counsel for the parties draft a formal judgment containing those provisions required by the Court and then present the judgment for approval and signature as soon as possible.

F.B.E.

U. S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
FILED
AUG 13 1965
L. DALLAM O'BRIEN, JR.
CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

SHARON LYNNE GEORGE, et al.,

Plaintiffs,

vs.

C. WALTER DAVIS, President, East Feliciana Parish School Board,

Defendant.

CIVIL ACTION

NO. 3 2 5 3

* *

ORDER

This matter came to be heard in open court this date, the complainants being represented by Nils R. Douglas and Murphy W. Bell and the respondent by Harry T. Kron, Assistant Attorney General.

The Court considering the law, the pleadings, the statements made of record, orders the desegregation of the East Feliciana Parish School System under a plan hereafter recited in full:

1. All initial pupil assignments made for the 1965-66 school year are subject to the following provisions:

   a. The East Feliciana Parish School Board will mail a notice to all prospective first and twelfth grade students, regardless of race or color, by August 16, 1965, advising them that they may submit an application no later than 12:00 noon, Monday, August 23, 1965, for reassignment to a school other than that previously assigned.

   b. Unless otherwise specifically provided herein, such reassignments shall be made in accordance with the procedures pertaining to assignments currently in general use by the East Feliciana

FEE
PROCESS
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Parish School Board. Application forms for such reassignments will be made available along with the notice by the School Board to all students in grades one and twelve, and complete, detailed instructions as to the procedures to be followed in applying for reassignments will be furnished with the applications.

c. The East Feliciana Parish School Board will cause to be published on August 20, 1965 in the Clinton Watchman, a notice to persons responsible for pupils eligible for reassignment, advising said persons that applications for reassignment in accordance with this Order may be made not later than 12:00 noon, August 23, 1965. This notice shall include a description of the right of transfer for all students, as described in part 4 below.

d. Reassignments, when requested, shall not be unreasonably denied. No denial of a request for reassignment shall be based on race or color. However, in determining whether or not a request for reassignment shall be granted, the School Board in considering the application for reassignment may consider the following factors as proper criteria to be applied in granting or denying the request for reassignment:

(1) The desire or wishes of the pupil and his parents or legal guardian.

(2) The availability of space or other facilities in the school to which reassignment is requested.

(3) The age of the pupil as compared with the ages of pupils already attending the school to which reassignment is requested.

(4) The availability of requested or desired courses of study in the school to which the reassignment is requested.

(5) In the event a reassignment is requested to a particular school, but it develops that there is available space in another school which is in all respects comparable to the one to which reassignment is requested and is closer to the applicant's residence, the School Board may, if it deems it advisable, make the reassignment to the comparable school closest to the pupil's residence rather than to the school to which reassignment is requested.

(6) No pupil need be granted more than one transfer in any one school year.

(7) No request for transfer or reassignment may be denied solely on the grounds of technical errors made by the applicant or his parent or legal guardian in the preparation of the application for transfer or reassignment.

e. All pupils requesting reassignment in accordance herewith shall be notified in writing by the School Board of action taken on their requests for reassignments not later than August 25, 1965. If such notification is to the effect that the requested reassignment has been denied, specific reasons for such denial shall be clearly set forth in the notification of rejection.

2. The East Feliciana Parish School Board will desegregate grades one and twelve for the 1965-1966 school year. All reassignments of pupils to the first and twelfth

grades in all schools under the supervision and control of the East Feliciana Parish School Board shall be made purely and simply on the basis of individual choice, reserving to all pupils, however, the right to apply for assignment in accordance with the procedures hereinabove established, and reserving to the School Board through its authorized representatives, the right to place a pupil in a school other than the school of his choice should there be a comparable school closer to the pupil's residence than is the school of his choice.

3. In each succeding school year, this planned desegregation shall progress so as to include additional grades as follows:

   a. School year 1966-1967 -- grades 2, 3, 8, 9, 10

   b. School year 1967-1968 -- grades 4, 5, 6, 7, 11

4. Any pupil attending a school to which he was originally assigned on the basis of his race, color, or national origin shall have the right, irrespective of whether or not the grade he is attending has been desegregated, to transfer his enrollment to another school so as to be able to take a course of study for which he is qualified and which is not available in the school he is then attending.

5. Beginning with the year 1965-1966, dual school districts on racial lines shall be abolished contemporaneously with the application of this plan to the respective grades when and as reached by the application of this plan. As the dual system is abolished, the board shall present to the Court for approval its maps and plans for a single system of geographic school districts.

6. The method of reassignment herein provided for will be subject to all reasonable procedural requirements that may be adopted and promulgated by the East Feliciana

Parish School Board.

7. Nothing contained in this resolution shall be construed to prevent the separation of boys and girls in any grade or school, or to prevent the reassignment of boys and girls to separate schools.

8. This order does not apply to teaching staff and does not require the East Feliciana Parish School Board for the 1965-1966 School Year to meet all the requirements of the General Statement of Policies Under Title VI of the Civil Rights Act of 1964, issued by the United States Department of Health, Education, and Welfare, but such requirements, except as just above noted, shall be met in succeeding years, barring some administrative difficulty of which the Court is not now apprised.

9. If any paragraph of these rules and procedures shall be held by any court of competent jurisdiction to be invalid, for any reason, the remaining paragraphs shall continue in full force and effect.

IT IS FURTHER ORDERED that the East Feliciana Parish School Board place the above plan in operation in accordance with the terms, procedures and conditions thereof, and certify its compliance before September 3, 1965.

THUS DONE AND SIGNED in open court at New Orleans, Louisiana, this 13th day of August, 1965.

Frank B. Ellis

U. S. DISTRICT JUDGE

TWENTIETH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

NO: STATE OF LOUISIANA FILED:

vs

* *

MOTION FOR PRELIMINARY HEARING

NOW into court through undersigned counsel comes:
defendant in the above entitled and numbered cause protesting that he is not guilty and reserving his right to file other special pleadings herein moves this Honorable Court for a preliminary examination into the charges herein as authorized under L.S.A.-R.S. 15:154.

WHEREFORE, your mover prays that the court grant a preliminary examination in this matter.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY: _____

MURPHY W. BELL
971 SOUTH 13TH STREET
BATON ROUGE, LOUISIANA

OF COUNSEL:

CARL RACHLIN
280 BROADWAY
NEW YORK, NEW YORK

FLOYD B. McKISSICK
213½ W. MAIN STREET
DURHAM, NORTH CAROLINA

ORDER

IT IS ORDERED by the court that a preliminary examination in the case of the State of Louisiana vs , Number

be set for 1964 at o'clock

CLINTON, LOUISIANA

, 1964.

_____
JUDGE

TWENTIETH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

NO. STATE OF LOUISIANA FILED:

vs.

* *

MOTION TO RECUSE

NOW into court through undersigned counsel comes:
who reserving his right to file other special pleadings in this matter suggest to the court that the Honoralbe John R. Rarick should recuse himself from this matter for the following reasons:

1.) Defendant intends to challenge the constitutionality of the Jury Commission and the General, Grand and Petit Jury Venires for the Parish of East Feliciana and in so doing intends to call as a material witness the Honorable John R. Rarick.

WHEREFORE, your mover prays that the Honorable John R. Rarick trial Judge herein recuse himself from any further consideration of this matter and further prays that in the event the said Honorable John R. Rarick should decline to recuse himself, that this matter of recusation be submitted to another judge of an adjoining parish or a lawyer possessing the qualifications of a judge to try and determine whether or n not the Honorable John R. Rarick should be recused.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
ATTORNEYS FOR DEFENDANT
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY: _____

MURPHY W. BELL
971 SOUTH 13TH STREET
BATON ROUGE, LOUISIANA

OF COUNSEL:

CARL RACHLIN
280 BROADWAY
NEW YORK, NEW YORK

FLOYD B. McKISSICK
213½ W. MAIN STREET
DURHAM, NORTH CAROLINA

TWENTIETH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

vs.

* * * *

TWENTIETH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

vs.

* *

APPLICATION FOR CHANGE OF VENUE

NOW into Court comes:

defendant in the above entitled and numbered cause and moves that this Honorable Court grant him a change of venue and removal of this cause to another parish in the manner and form provided by law, for the following reasons:

1.) Defendants are all Negroes and declared opponents to the system of segregation as it exists in the Parish of East Feliciana.

2.) Many of the defendants herein are members of the Congress of Racial Equality, an organization dedicated to the eradication of segregation and discrimination.

3.) Much publicity, all unfavorable to the Congress of Racial Equality has been given to the activities of CORE in East Feliciana Parish.

4.) Most, if not all, of the white persons in the Parish are opposed to the tenets of the Congress of Racial Equality.

5.) Most, if not all, of the white persons in East Feliciana have fixed unfavorable opinions about the activities of the defendants herein, therefore it will be impossible to get an impartial jury to try this case.

6.) The attitude of the public officials in the Parish of East Feliciana is antagonistic to the goals of the defendants herein, thus putting into motion the entire processes of government city, parish, and state against them in a manner such as to abuse their office.

7.) A mere reading of the indictment herein irrebuttably shows that under no reasonable construction of the communication in question can it be said to constitute a threat to the Mayor of the Town of Clinton.

WHEREFORE, mover prays:

I. That the District Attorney for the Parish of East Feliciana be ordered to show cause upon a date and hour to be set by this Honorable Court why a change of Venue should not be ordered.

II. For all general and equitable relief.

III. That after due proof had hereon the Motion for a Change of Venue be granted.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY: _____

MURPHY W. BELL
971 SOUTH 13TH STREET
BATON ROUGE, LOUISIANA

OF COUNSEL:

CARL RACHLIN
280 BROADWAY
NEW YORK, NEW YORK

FLOYD B. McKISSICK
213½ W. MAIN STREET
DURHAM, NORTH CAROLINA

A F F I D A V I T

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared: NILS R. DOUGLAS, who after first being duly sworn did depose and say that he is one of the attorneys in the above matter and that he prepared the above and foregoing motion and that all the facts and allegations therein contained are true and correct to the best of his knowledge, information and belief.

_____
NILS R. DOUGLAS

O R D E R

It is ordered by the Court that RICHARD KILBOURNE, District Attorney for the Parish of East Feliciana, show cause on the _____ day of_____196___, why a change of Venue should not be granted.

CLINTON, LOUISIANA,

_____
JUDGE

TWENTIETH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

NO. STATE OF LOUISIANA FILED:

vs.

* *

APPLICATION FOR SUBPOENA DUCES TECUM TO THE CHARIMAN OF EAST FELICIANA PARISH JURY COMMISSION.

NOW into court comes:

defendant in the above entitled and numbered cause and suggests to the court that the production in court of the following answers are necessary to the defense of defendant. These answers should be made available for the Trial of The Motion to Set Aside the General Jury Venire, The Grand Jury and Petit Jury Venires.

QUESTIONS

1. The total number of white persons on the general jury venire from which the present grand jury was drawn.
2. The total number of Negroes on the general jury venire from which the present grand jury was drawn.
3. The total number of whites on the list of Grand jurors for that term of the 20th Judicial District Court which began December 2, 1963.
4. The total number of Negroes on the list of Grand Jurors for that term of the 20th Judicial District Court which began on December 2, 1963.
5. The total number of whites on the list of petit jurors for that term of the 20th Judicial District Court which begans on January 6, 1964.
6. The total number of Negroes on the list of petit jurors for that term of the 20th Judicial District Court which begans on January 6, 1964.
7. The number of Negroes who served on each grand jury since January, 1956.
8. The number of Negroes who were on petit juries which actually sat in judgment in a criminal case beginning with January, 1956.
9. A copy of the subpoena sent to all prospective general jury venireman ordering them to appear for examination on their qualification as jurymen.

The production in court on the trial of The Motion to Set Aside The General, Grand and Petit Jury Venires of the above requested

information is necessary and material to the interests of the defendant. He intends to prove by the answers above requested that Negroes have been systematically excluded and only a token number of Negroes have been included on the general, Grand and Petit Jury venires.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
ATTORNEYS FOR DEFENDANT
2211 DRYADES STREET
BY: _____
MURPHY W. BELL
971 SOUTH 13TH STREET
BATON ROUGE, LOUISIANA

OF COUNSEL:
CARL RACHLIN
280 BROADWAY
NEW YORK, NEW YORK

FLOYD B. McKISSICK
213½ W. MAIN STREET
DURHAM, NORTH CAROLINA

O R D E R

IT IS ORDERED by the court that a writ of Subpoena Duces Tecum issue to the Chairman of the Jury Commission for the Parish of East Feliciana commanding him to produce in open court on the day of the trial of the Motion to Set Aside the Jury Commission, and the General, Grand and Petit Jury Venires or on any other day to which the trial may be continued the answers to the above mentioned questions.

CLINTON, LOUISIANA
, 196 .

_____
J U D G E

TWENTIETH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

NO. STATE OF LOUISIANA FILED:

vs.

* *

MOTION TO SET ASIDE JURY COMMISSION, GENERAL JURY VENIRE, GRAND JURY VENIRE, AND PETIT JURY VENIRE.

NOW into court comes:
reserving his right to file other special plreading and moves to set aside the Jury Commission, The General Jury Venire, The Grand Jury Venire, and the Petit Jury Venire for the following reasons.

1.) Your mover is a member of the Negro race and he alleges that the jury selection plan in the Parish of East Feliciana has not been impartially administered but has been administered so as to exclude all but a token number of Negroes from the General Jury Venire and the Grand and Petit Jury Venire, said exclusion being based solely on race.

2.) That the net effect of said lack of an impartial administration of the jury system is that there are so few Negroes on the Petit Jury Venire that on the voir dire examination after the state exercises its peremptory exceptions rarely if ever does a Negro serve on any petit jury which actually decides any case.

3.) That the aforementioned lack of an impartial administration of the jury system will prevent your mover from getting a fair trial in denial of his rights guaranteed by the Sixth and Fourteenth Amendments to the Constitution of the United States.

4.) That selection of the Grand Jury foreman, the General Jury Venire, and the Grand and Petit Jury Venire is done under the aegis of a state enforced segregated society which prohibits bona fide compliance with state and federal constitutions. That all selection of the general jury venires are done on the basis of reputation and/or acquaintance. That the vicissitudes of a segregated society with its social, political and economic ostracisms and pressures effectively prohibit qualified Negroes from entrance into community circles wherein acquaintanceship and reputation for honesty, character and integrity could be established. Thus those charged with the duty of "selecting" the best qualified without discriminating on the basis of race are ill suited because of the system of segregation.

5.) That is is the positive duty of the jury commissioners and other persons charged with the selection and administration of the jury system to familiarize themselvew fairly

with the qualifications of all qualified prospective jurors of the parish without regard to race or color and that the same has not been done in this instance.

6.) That the decided variation between the population ratio of whites to Negroes and the ratio of whites to Negroes on the General Jury Venire which variation is long continued and cannot be explained furnishes sufficient evidence of a lack of an impartial administration of the jury system and of the systematic exclusion of all but a token number of Negroes on the General Jury Venire, and the Grand and Petit Jury Venires.

7.) That currently many state laws require segregation, See L.S.A. -R.S. 4:5; 4:451;4:452; 14:79; 15:752; 17;10; 17:443; 17:462; 45:528; 45:529; 45:530; 45:531; 45:532; 45:1301; 45:1303; 23: 971; 23:972; 33:5066; 13:917; 33:4558.1; and 14:317.

8.) That segregation is the express policy of the State of Louisiana and that the Louisiana Legislature in 1960 adopted the following preface to a joint resolution concerning the possible integration of any tax supported facility in the State:

> "Whereas, Louisiana has always maintained a policy of segregation of the races, and
>
> Whereas, it is the intention of the citizens of this sovereign state that such a policy be continued..." Act No. 630 of 1960 to amend Article X of the Louisiana Constitution.

9.) That the Town of Clinton is in East Feliciana Parish, Louisiana. East Feliciana Parish, according to the United States Census of Population: 1960 Final Report PC (1) - 20B, has a total population of 20,198. That fifty four per cent of the population of the parish or 10,906 are Negroes.

10.) That according to the Report of the United States Commission on Civil Rights for 1963 which is entitled Civil Rights, in Table A at page 33 the following is cited.

1.) 1956 Registration, white, 2,817 or 45% of the voting age whites.

2.) 1956 Registration, Negro, 1,319 or 31.5% of the voting age Negroes.

3.) 1962 Registration, Negro 85, or 1.4% of the voting age Negroes.

4.) 1962 Registration, White 2,515 or 36% of the voting age whites.

And that the voter registration rolls are used as a source of names for the general jury venire and grand and petit jury venires thus the above statistic show beyond all doubt that Negroes are excluded from all jury lists and this simply by reason of race.

11.) That Clinton the Parish Seat, has a total population of 1,568; 745 whites and 822 Negroes.

12.) That the booklet entitled United States Census of Population 1960 Louisiana, General Social and Economic Characteristics, PC (1) 20 C La. shows at Table 88 page 20-233 that there are in East Feliciana Parish 419 non-white males engaged in professional and Technical work, farming, farming management, clerical, sales, crafts, and kindred work.

13.) That the booklet cited in allegation 12 shows at page 20-218, table 87 the following: out of 5,536 non-whites over the age of 25 years old 100 had completed 4 yrs. or more of college, 164 had completed 1 to 3 years of college, 101 had completed 4 years of high school, 513 had completed 1 to 3 years of high school, 370 had completed 8 years of elementary school and 543 had completed 7 years of elementary school.

14.) That the booklet cited in allegation 12 shows at page 20-223 table 88 the following: For non-white families in 1959 in East Feliciana Parish there were 511 families which had incomes of $3,000.00 or more.

15.) That never in the history of the Parish of East Feliciana has a Negro served as a jury commissioner, qualified Negroes being excluded solely because of race.

16.) That never in the History of the Parish of East Feliciana has a Negro been selected to serve as a Grand Jury Foreman.

17.) That never in the history of the Parish of East Feliciana has a Negro ever served on a petit jury which sat in judgment on a case.

18.) That all of the aforementioned allegations constitutes a great wrong and irreparable injury to your defendant in violation of his rights under the Sixth and Fourteenth Amendment to the constitution of the United States.

WHEREFORE, your defendant prays that this challenge to the Jury Commission, the general jury venire, the grand jury venire and the petit jury venire be maintained after due proof had hereon and that the indictment against defendant herein be held void.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
ATTORNEYS FOR DEFENDANT
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY: _____

MURPHY W. BELL
971 SOUTH 13TH STREET
BATON ROUGE, LOUISIANA

OF COUNSEL:
CARL RACHLIN
280 BROADWAY
NEW YORK, NEW YORK

FLOYD B. McKISSICK
213½ W. MAIN STREET
DURHAM, NORTH CAROLINA

TWENTIETH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

NO: STATE OF LOUISIANA FILED:

vs.

* *

MOTION TO QUASH

NOW into Court through undersigned counsel comes:

defendant in the above entitled and numbered cause and moves the Court to Quash the indictment against him because the indictment is unconstitutional in the following respects:

A. It is violative of defendants rights under:

1.) The first amendment to the United States constitution, namely the right to free speech and to petition the government for a redress of grievances.

2.) The fourth amendment to the United States Constitution, particularly but not exclusively that portion which says "... no warrants shall issue but upon probable cause..."

3.) The fifth amendment to the United States Constitution, particularly but not exclusively that portion which says"... nor shall (no person) be compelled in any criminal case to be a witness against himself..."

4.) The sixth amendment to the United States Constitution, particularly but not exclusively that portion which says "... the accused shall enjoy the right to a speedy and public trial by an impartial jury... and to be informed of the nature and the cause of the accusation against him ..."

5.) Section 1 of the XIV amendment to the Constitution of the United States.

B. The indictment is insufficient to properly inform the accused of the nature and the cause of the accusation against him in violation of the sixth amendment to the Constitution of the United States.

WHEREFORE defendant prays that this Motion to Quash be maintained after due proof had hereon, and that the indictment against defendant herein be held void.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY: _____

MURPHY W. BELL
971 SOUTH 13TH STREET
BATON ROUGE, LOUISIANA

OF COUNSEL:

CARL RACHLIN
280 BROADWAY
NEW YORK, NEW YORK

FLOYD B. McKISSICK
213½ W. MAIN STREET
DURHAM, NORTH CAROLINA

A F F I D A V I T

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared: NILS R. DOUGLAS, who after first being duly sworn did depose and say that he is one of the attorneys in the above matter and that he prepared the above and foregoing motion and that all the facts and allegations therein contained are true and correct to the best of his knowledge, information and belief.

_____
NILS R. DOUGLAS

NOV 9 1964

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

November 5, 1964

Carl Rachlin, Esq.
Congress of Racial Equality
38 Park Row
New York 38, New York

RE: Charles Pressley et al.
vs
City of Monroe et al.
CA 10412

Dear Carl:

I have just returned from a trip to Monroe, where I represented three CORE plaintiffs in the above suit in a pre-trial conference before Judge Ben Dawkins, Jr., Chief Judge of the U.S. District Court for the Western District of Louisiana. As you will no doubt recall, this is an action to desegregate the public libraries of Monroe, Louisiana as well as an action for damages for the unlawful arrest of certain members of Monroe CORE.

In addition to this case, we have five groups of cases that were removed from West Monroe City Court, Monroe City Court, as well as Ouachita Parish District Court, involving the same people as well as many others on charges of criminal trespass, disturbing the peace, and contributing to the delinquency of juveniles, all arising out of a series of tests and demonstrations at so-called "white" public libraries in the Parish of Ouachita.

Present at the conference, in addition to me and the Judge, was Haynes L. Harkey, representing the City of Monroe, and Fred Fudickar, representing the Parish Sheriff.

From the outset, it was conceded by the Judge and all parties that the libraries would have to be desegregated. The only issues are, the inclusion of other indispensable parties and the issue of damages. I was informed by the other parties that the

they knuckle under, but are only acting pursuant to a court decree of segregation

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

libraries are owned by the Ouachita Parish Police Jury (a county legislative body) and administered by a Library Board, and that these two bodies should be included as parties defendant. The reason the city or sheriff did not even mention them in their answers is that it would have been politically inexpedient to have impleaded them. The judge advised us to file a supplemental and amended petition so as to include them, and he will sign an order permitting this to be done.

We discussed the possibility of us abandoning our claim for damages in return for dismissing all of the criminal prosecutions in the removed cases. We were informed that this too was politically inexpedient since the District Attorney was not in this suit (although he is representing the state in the removal cases, and will be representing the police jury once they are made parties defendant herein). The Judge has agreed to lend his support to a practical solution of the desegregation of the library as well as the dismissal of the criminal cases.

Sincerely,

COLLINS, DOUGLAS & ELIE

BY: Robert F. Collins

RFC/amr

Dear Bob
Thank you for your letter of the 1st inst re the federal suit in the Monroe library matter.

What is it you ~~want me~~ want
like me to do at this time.
I assume you will file the
amended petition

The petition for certiorari
is being worked on

I will get you the ~~it~~ ~~it~~ ~~a~~
~~it~~ It, before long.

Regards
Ed

If they will desegregate the
libraries and withdrawal and
dismissal of charges I think I
~~might be~~ we should look
favorably on it. To help their
political problems, perhaps we
can get a decree from Judge Dawson
which would take them off the
hook politically. This would have to be

(next page)

November 11, 1964

Robert F. Collins, Esq.
Collins, Douglas & Elie
201 Douglass Life Insurance Building
2211 Dryades Street
New Orleans, Louisiana 70113

Dear Bob,

Thank you for your letter of the 5th inst. re the Federal suit in the Clinton library matter.

What is it you would like me to do at this time? I assume you will file the amended petition.

The petition for certiorari is being worked on.

I will see you the 15th or 16th. I plan to arrive a little after 7 P.M. and will give you a ring Sunday evening.

Sincerely,

Carl Rachlin

CR:hdl

P.S. Enclosed is copy of a requisition we are putting in. We will keep pushing this.

November 12, 1964

Robert F. Collins, Esq.
Collins, Douglas & Elie
2211 Dryades Street
New Orleans, Louisiana 70113

Dear Bob,

Thank you for your letter of the 5th inst. re the Federal suit in the Monroe library matter.

What is it you would like me to do at this time? I assume you will file the amended petition.

If they will desegregate the libraries and we can get withdrawal and dismissal of criminal charges, I think we should look favorably on it. To help their political problems, perhaps we can get a decree from Judge Dawson which would take them off the hook politically. They will have to say they knuckled under, but are only acting pursuant to a court decree of desegregation.

Regards,

Carl Rachlin
General Counsel

CR:hdl

November 13, 1964

Dear Mr. Collins,

The attached letter dated November 12th on the Monroe library matter is a corrected version of the letter sent to you dated November 11th and referring erroneously to the Clinton library matter.

Mr. Rachlin also decided to add something to the letter.

As the letter would not reach you before you and Mr. Rachlin see each other in New Orleans on Monday, he is brining it down with him.

Sincerely,

Hannie de Leeuw

MURPHY W. BELL
ATTORNEY AT LAW
971 SOUTH 13TH STREET
BATON ROUGE, LA.

TELEPHONE
348-3572

August 2, 1965

COPY

Mr. C. Walter Davis, President
East Feliciana Parish School Board
Clinton, Louisiana

Gentlemen:

I represent several Negro parents of children attending schools under your jurisdiction. They complain that said schools are operated on a racially segregated basisi with respect to both students and personnel. They have engaged me to lodge this complaint with you requesting that their children be permitted to attend the public schools of East Feliciana Parish without any distinction on the basis of their race or color as they have a legal right to do.

In order to avoid any unnecessary legal complications, I would appreciate an indication from you that the request of these citizens is going to be met and become effective as of the school year beginning September, 1965.

Very truly yours,

Murphy W. Bell

cc: Mr. Ronnie M. Moore, Field Secretary, CORE

Mr. M. Ney Williams
Superintendant of Schools
East Feliciana Parish
Clinton, Louisiana

Carl Rachlin, Esq.

Nils Douglas, Esq.

MWB/ps

real file

August 5, 1965

Collins, Douglas & Elie, Esqs.
2211 Dryades Street
New Orleans, Louisiana

Dear Bob, Nils and Lolis:

I have received a copy of a petition from citizens of Minden, Louisiana. There are some things on that petition that we can undertake on their behalf, immediately:

a) Please file a school desegregation case promptly. I assume the same form used in Bogalusa or West Feliciana would be applicable.

b) A similar suit should be filed to desegregate other public facilities, such as ball parks and playgrounds.

c) a suit to remove all public designations of segregated facilities such as rest rooms, etc.

d) CORE Task Force workers, in and around Minden, should make a detailed study of the deficiencies of municipal services in the Negro section in Minden with regard to such matters as sewers, traffic facilities, street lights, sidewalks, etc., with a view to commencing litigation in that area along the lines that Richard Haley and I have discussed with regard to Jonesboro.

Cont'd....

It would be good if you could undertake these promptly, while the LCDC lawyers are still in active attendance.

With kindest personal regards,

Cordially,

CR/cs
Enc.

CARL RACHLIN
General Counsel

cc: Messrs. Bell, Haley, Moore, Rich, Wiley

A PETITION

We the undersigned, acting as spokesmen for a large and responsible portion of the negro citizenship of Minden, Louisiana, present the following demands to the Mayor and Council of the city of Minden, in the interest of obtaining for all the people of this city, both negro and white, full freedom and equality.

[illegible]

[illegible] be granted a [illegible] that we demand complete desegregation of all public schools.

[illegible]

[illegible]

THE FOLLOWING PAGE(S) ARE THE BEST AVAILABLE.

A PETITION

To the undersigned, acting as spokesmen for a large and respectable portion of the negro community of Marion, Louisiana, present the following demands to the mayor and Council of this city.

It is the interest of abolishing forever the people of this city, the negro and white, full political equality.

[illegible]

[illegible] should be provided a [illegible] school for [illegible] of colored, irrespective of all public schools.

[illegible] school should be [illegible] and be integrated [illegible] and be [illegible] should be [illegible]

3. There should be an expansion of existing public rest room facilities together with the desegregation of existing facilities.

4. The garage facilities in the community should be expanded and improved.

5. The health and housing codes should be more diligently enforced, with particular regard to the following conditions:

[illegible] contamination of sanitary outlets and open cesspools.

[illegible] number of garage[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] should be provided where necessary [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [

N.P. Louisiana Employment Comm

OFFICE OF THE
ADMINISTRATOR

STATE OF LOUISIANA
DEPARTMENT OF LABOR
DIVISION OF EMPLOYMENT SECURITY
POST OFFICE BOX 4094
BATON ROUGE

October 5, 1965

In reply refer to:
DWS:WNC

Congress of Racial
Equality, Inc.,
30 Park Row,
New York, New York 10038

OCT 8 1965

Gentlemen:

It is a requirement of the Louisiana Employment Security Law that every employing unit doing business in the State of Louisiana, regardless of the number of individuals employed, file a Status Report.

Please complete the enclosed Status Report and return it within ten days so that your status can be determined.

If the Status Report indicates you are a subject employer, you will be assigned an employer identification number and furnished complete information concerning the filing of reports. If the Status Report indicates you are not a subject employer, you will be notified.

Should the Status Report indicate you to be a successor employer, the experience rating records of your predecessor will automatically be transferred to your account. After the transfer has been accomplished, you will be notified of the results.

Your cooperation in this matter will be appreciated.

Very truly yours,

Geo. W. May, Jr., Director
Unemployment Insurance Section

Enclosure

LDES 231
(5-64)

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

December 10, 1965

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

DEC 13 1965

Mr. Carl Rachlin
Attorney at Law
38 Park Row
New York 38, New York

Dear Carl:

Enclosed herewith you will find a form called a status report, which the State of Louisiana, Department of Labor, Division of Employment Security is requiring that the Southern Office of C.O.R.E. complete and send in. This is a form which you may be familiar with, because C.O.R.E. in New York may find it necessary to complete a similar form for the State of New York.

I spoke to a gentleman name Mr. Gauthreaux of the local office, as to C.O.R.E.'s status. He informed me that while C.O.R.E. was a tax exempt organization, that because of the fact that it attempts to influence legislation, that it has an obligation to complete this form, and it is not considered exempt from the unemployment tax. However, before advising Dick Haley as to completing this form, I thought that it should be forwarded to you, and that the procedure to be followed should be in accordance with the procedure followed in New York, with reference to a comparable situation.

Sincerely,

COLLINS, DOUGLAS & ELIE

BY: Bob

RFC/ew

Enclosure:

December 20, 1965

Robert Collins, Esq.
Collins, Douglas & Elie, Esqs.
2211 Dryades Street
New Orleans, Louisiana

RE: Louisiana Department of Labor Status Report

Dear Bob:

If, under the Louisiana law we must file the above report, then we have no choice. What expenses do we incur as a result of filing? Can you tell?

If, in your view, they are not trying to get us, but are treating us as they would any organization then please proceed with the filing of the report.

I expect to be in New Orleans for the SEDF Leadership Conference on January 7-9th. I trust you, Lolis, Nils and I can have a little party.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

December 20, 1965

Mr. Ed Hollander
2209 Dryades Street
New Orleans, Louisiana

Dear Ed:

I have your memo concerning the park in Greensburg, St. Helena Parish. Please ask Lolis to bring an action to desegregate. I will follow up with the Justice Department. If Lolis hasn't the time, let me know and we will draw the complaint.

Give me the details as to the park's name, location, how large, is it open to the public; is it serviced by town or Parish police; who repairs park facilities; who takes care of the grass, town, Parish, or State? Who is in charge of the park? What do you know of the origin of the park? This can be traced back on the deed records to show where it came from.

Let me hear from you soon.

Sincerely,

CR/cs

CARL RACHLIN
General Counsel

cc: Messrs. Wiley, Gartner, Harris, Rich, Haley, Dennis, Elie

National Office
Task Force, WH 6, 20 min, Stan Help Meeting Tues

Fred Lacey to Ed Hollander Mon. December 6, 1965
incident report GREENSBURG, ST. HELENA PARISH

Sunday, Nov 28, 1965

fred had earlier sent letters to malt shop, city cafe, park and to mayor Winfred Lindsey (of Greensburg, St. Helena Parish) about segregated city park, this had been under discussion a month by youth group - SAFE - Students Association for Freedom and Equality, centered in Helena High School and Greensburg HightheOne integrated high school in parish - 16 Negroes. Fred got call from mayor who was very evicted. Fred had signed the letters as core staff, but said that the students would take direct action if no improvement. no other called. Mayor said it was a private park, that an individual owned park. Reliable reports say park was bought with state funds, but no one know who owns. Fred told students had gotten no reply from anyone else; students decided to go test, six went, fred went and took picutres from outside. Walkers Malt Shop, South Main Street, Greensburg. Sat down, got served. A white student reported to by Earl Ray Clark, in malt shop, told Negro students theywouldn't get out of the shop alive. But no trouble inside. Group of white students outside figuring out what to do about Fred outside, one just back from a hunting trip, with rifle on front seat of car told Fred if he took his picutre he would kill him-fred. but no physical abuse to Fred at all this time.

Saturday, December 4th had been a state-wide ~~xxxx~~ Negro high school student meeting in Greensburg. ~~xxxxxxxxxxxxxxxx~~ after meeting local students decided to go to malt shop - surprise them as wouldn't be expected until Sunday. 5 went in, served. A car in the parking lot had KKK painted all over it advertising a KKK meeting that night, also a PA system mounted on roof. Other car in lot also had ~~xxxxxxxxxx~~ also had KKK rally painted on it several times. Fred outside taking pictures again. both cars believed to be out of parish, no one had seen them before, believed tobe men in for KKK rally that night, speakers, etc. The men from the cars were in the malt shop when Negro students went in. They cameout in anguish

when Negroes went in, one of white man so upset he appeared almost ready to cry. Saw Fred taking picture of them; again spoke menacingly to Fred, who got into car and locked it. Threatened to bash window in unless Fred gave him camera, fred refused, pointed out he would get in trouble with FBI if he did it, cooled him down. Other man got rifle out to bash window in but first restrained him. Two whites went back in malt shop to mass students. Students not intimidated, talked back to them. Whites cameout again, got in cars, pulled out. As they passed Fred, girl in one of the cars called Fred "Nigger", Fred smiled, but man pulled pistol and pointed it at Fred, said "Don't you smile at me boy or I'm going to shoot you." Then they drove away. Before they went they phoned 3 places for sheriff to get police protection on test, couldn't get him or deputy and so no police protection.

Sunday, December 4th KKK rally held sat night, students didn't want whites to think they had been intimidated by rally, decided to go tomalt shop again, pretty much expected trouble. several car loads of white students driving past Mason hall where mass negro students held meetings. students not prepared to be non-violent, fred arranged for him to go out first at malt shop to see if there was going to be violence. Got to malt shop & Fred got out, trouble. As Fred got out three white students jumped out of their car, ran into malt shop, turned off lights, locked door said shop was closed, fred heard them planning to go out back door, come around to front to get him-fred. Proprietress Mrs. Walker told white students to turn lights back on, they didn't and she did. Door unlocked. Fred went in, ordere coke, one of the students 6 feet, 220 lbs. stood up, said to fred something to the effect of "Lets's fith fight." Proprietress asked them to not to fight in shop, white students went out side and the one who had spoken told fred he would be waiting outside for him. Fred finished coke and went outside. ~~Stuk~~ whites waiting there, the one who had spoken told fred, "I'm going to whip your ass." ~~[illegible]~~ Fred told him that he wasn't going to fight him. Started to walk past him but told him (now about 5:30 PM) white pushed him back several times, urged him to fight. thenstarted to hit him in stomach, drew back hoping fred would be ready to fight.

again told fred to fight, but fred said again he was non-violent and would not fight him. then white slapped him in face, told fred to fight him, fred again said he was non-violent and wouldn't fight him. fred says this must have made him mad for next thing fred remembers had been knocked unconscious for several moments is that he was on ground, trying to get up and saw was some. Other white students had come up, urging boy who hit fred to stop, that it was enough, another watched holding a shotgun or rifle. Another noticed the Negro students in car taking pictures, went to car pointed shot gun or rifle at them and told them he would blast them if they didn't give them the camera, "some students refused, whites then lifted hood of Negroes car to mess up engine but negro students started motor and whites didn't fix mess with it. Fred getting up, went over to Negroes car, hood still up, fred put hood down, walked past two white students and got in (Negro) car. as fred and negroes drove away one of white students kicked back of car. During the time the negro students and fred were away, about 20 minutes, they had left one student to try to reach the sheriff (R. Duncan Bridges) no answer at either of sheriffs two office numbers and his home number busy the whole 20 minutes. But when Fred got back he often called sheriff at home and got him first time. An hour after that fred tried to call FBI but phones were dead at place where fred stays (home of Joe Bryant) and next door, then they drove several miles around but phones also dead and didn't work again until about noon Monday. Fred had to go to Clinton to call FBI Monday afternoon. Monday night fred saw William M. Jones, M.D. in New Orleans who said fred had contusion of left jaw. The white student who beat fred is the same Earl Ray Clark as mentioned in the Sun 11/28 incident.

La
School
Cases

February 21, 1966

William Q. Keenan, Esq.
219 East 42nd Street
New York, New York

Dear Bill:

I think the letter from Harris David enclosed is self explanatory. When we receive the record we will then have 30 days in which to file our brief. Notwithstanding the unavailability of a number of papers at this time, I hope that the papers which you have received have given you a clear enough idea of the case to frame the body of the brief itself, if not the initial "Statement of the Case."

At any rate, please do your best. Thank you very much for all the bother.

Cordially,

SMN/cs

STEPHEN M. NAGLER

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

May 11, 1966

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

COPY

Honorable JUDGE E. Gordon West
United States District Court
Eastern District of Louisiana
Baton Rouge, Louisiana

Re: George v. Davis, President of East Feliciana School Board No. 3253

Dear Judge West:

We feel that it is our duty to inform you that racial discrimination still exists in the East Feliciana school bus system. James Brown and Diane White, both Negro students who ride a bus going to Trenton High School have been assigned seats and are forced to ride together in the back of the bus.

A complaint was lodged with M. N. Williams, Superintendant of the East Feliciana School System: he replied that it was the bus drivers bus, and that he had a right to assign students where he wanted to.

We feel that this is a continued segregation in violation of this Court's previous order and the agreement made at the pretrial conference held in this case on March 14, 1966.

We urge the court to issue a preliminary injunction in the form of the Temporary restraining order issued by this Court on March 2, 1966, and specifically prohibiting segregation and discrimination in school bus transportation.

Very respectfully yours,

COLLINS, DOUGLAS & ELIE

BY: R Collins
ROBERT F. COLLINS

cc Richard Kilbourne, Esq
District Attorney
Clinton, La.

Hon. Jack P. F. Gremillion
Attorney General
State of Louisiana
Supreme Court Bldg
New Orleans, La.

Carl Rachlin, Esq.
38 Park Row
N. Y. 38, N. Y.

Murphy Bell, Esq.
971 S. 13th St.
Baton Rouge, La.

C. WALTER DAVIS, PRESIDENT

M. NEY WILLIAMS, SUPERINTENDENT

EAST FELICIANA PARISH SCHOOL BOARD

CLINTON, LOUISIANA

May 17, 1966

To Jerome
& Ken Dejean

ATTORNEY GENERAL'S OFFICE

Honorable Jack P. F. Gremillion
Attorney General
State of Louisiana
Baton Rouge, Louisiana

Attention: Mr. Kenneth Dejean

Dear Mr. Gremillion:

Pursuant to our telephone conversation of May 16, I am outlining below the procedures followed in assigning negro students attending Clinton High School to the school bus operated by Mr. Willie Smiley. This is the same arrangement that was discussed in detail at the pre-trial conference on March 14, and approved by Judge West.

Mr. Willie Smiley began transporting Dorothy Diane White, a first grade negro student, on March 4. At this time she was assigned to one of the two vacant seats on the bus. On March 7, I was informed that Mr. Smiley's bus had failed to pick up James Brown, a twelfth grade negro student at Clinton High School. Until this time James Brown had lived with a relative in the town limits of Clinton. A check with his mother who lives on Mr. Smiley's route revealed that during the weekend of March 5 and 6, James had moved back to her home. On March 7, Mr. Smiley began transporting James and assigned him to the other vacant seat on the bus.

For several school sessions Mr. Smiley has assigned a seat to each student who rides his bus. This practice was initiated after he had experienced difficulties with students cutting the upholstery and defacing his bus. The negro students were assigned in the same manner as additional white students would have been.

Yours very truly,

M. N. Williams

M. N. Williams
SUPERINTENDENT

MNW/lp

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

JACK P. F. GREMILLION
ATTORNEY GENERAL

May 18, 1966

Honorable E. Gordon West
Judge, U. S. District Court
Eastern District of Louisiana
Post Office Building
Baton Rouge, Louisiana

File: East Feliciana School Board

Re: George v. Davis
Civil Action #3253

Dear Judge West:

On May 11, 1966, we received a carbon copy of the letter addressed to you from Robert F. Collins. Mr. Collins stated in the letter that there still exists racial discrimination in the East Feliciana School bus system and he made specific reference to James Brown and Diane White.

As you will recall, this particular situation was discussed at our pre-trial conference on March 14. We are enclosing a letter from Superintendent Williams which will explain the situation.

Sincerely yours,

Kenneth C. DeJean

KCD:mm
Enc.

Kenneth C. DeJean
Special Counsel

cc: Mr. H. N. Williams
Superintendent
East Feliciana Parish
Clinton, Louisiana 70722

cc: Mr. Richard N. Kilbourne
District Attorney
20th Judicial District
Clinton, Louisiana

Mr. Robert F. Collins
Collins, Douglas & Ellis
Attorneys and Counsellors at Law
201 Dumaine Life Ins. Bldg.
[illegible] Bienville Street
New Orleans, Louisiana 70113

COPY

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

JD:JJM:swh #17-029-23
DJ 168-33-24

MAY 27 1966

Mr. Carl Rachlin
General Counsel
Congress of Racial Equality
150 Nassau Street
Room 1707
New York, New York 10038

Dear Mr. Rachlin:

We acknowledge your letter to Mr. Doar of April 19, 1966 regarding complaints by residents of Concordia Parish, Louisiana, of racial segregation of patients and visitors at the Concordia Parish Hospital, particularly as practiced in the maternity ward.

This is to advise you that this Department is presently investigating similar complaints against the same hospital and we will take whatever action may be warranted by the results of the investigation.

Thank you for your interest in this matter.

Sincerely,

JOHN DOAR
Assistant Attorney General
Civil Rights Division

By: James J. Murphy
JAMES J. MURPHY
Attorney
Southwestern Section

JUN 29 1966

Rachlin

core, St. Helena Parish Project
route 2, box 10,
Greensburg, La., 70441
June 25, 1966

Mr. Ronnie Moore
Core - CORE
150 Nassau Street
Room 2707
New York, New York, 10038

Ronnie,

I have some bad news to talk about. Mr. Willie Howard was involved in a wreck a short time ago. As I am sure you know, Mr. Howard is and always has been the main man in this parish who was always willing to fight for equality, no matter how much it cost him or how much time away from his farm or family it meant.

This wreck was probably caused by a white man who was drinking and driving. It happened outside Amite, La.. We have heard that the white man was originally charged with a traffic violation and being the cause of the wreck.

The white man was immediately taken off to the hospital. Mr. Howard was left for dead by the police, and some local black men got him out from the wreck. The ambulance would not take Mr. Howard to the hospital, and neither would the police. Some black men in a truck finally took him there.

The whites in the town where Mr. Howard was then taken began to talk about him and searched his wallet, finding his papers in it making reference to the freedom movement, and we have also heard that they called up the sheriff in St. Helena to ask just what sort of a "nigger" was Mr. Howard.

I say all of this to make very clear the following: Mr. Howard has now been charged with causing the wreck, and is being sued by the white man who probably ran into him. He is also being sent to court directly by the police. Mr. Howard is being represented by Atty. Murphy Bell(who recently quit the case).

Mr. Howard deserves core's help in meeting his legal expenses from this thing (clearly just another way of "getting" Mr. Howard) probably much more than any field worker core has ever had. This is not just something nice to do - Mr. Howard may lose his farm and be put into jail prison for a long time if he cannot get the legal aid he needs. Please, Ronnie, please do contact Mr. Rachlin, and Mr. Hartsfield and Atty Bell about this immediately, and please make arrangements to meet the legal expenses Mr. Howard faces and which must be met somehow.

C/c Carl Rachlin
Ronnie Moore
Atty. Bell

In Freedom,
Fred Lacey
Fred Lacey, core field worker

June 29, 1966

Mr. John Doar
Assistant Attorney General
Department of Justice
Washington, D. C.

Dear Mr. Doar:

I enclose a copy of a letter from Mr. Fred Lacey, a CORE Field Worker in St. Helena Parish, Louisiana. Mr. Lacey, as the letter explains, is concerned with a wreck in which a Mr. Willie Howard was involved. Mr. Howard, as is well known in St. Helena Parish, was one of the most effective and active civil rights workers in the area. The letter speaks for itself and is a matter of concern to all of us and I trust that you will cause an investigation to be made. Because if the statements therein are true, it appears that the Sheriff himself was involved and under the recent Supreme Court cases, may be a violation of Federal Civil Rights Law.

Yours very truly,

Carl Rachlin
General Counsel

CR/tp
Encl.
cc: Ronald Moore
Fred Lacey
Murphy Bell
Floyd B. McKissick

La School Cases

SCHOLARSHIP, EDUCATION AND DEFENSE FUND FOR RACIAL EQUALITY inc.
150 NASSAU STREET, NEW YORK, N.Y. 10038
TELEPHONE 964-8210

June 30, 1966

Robert F. Collins, Esq.
Collins, Douglas & Elie, Escs.
2211 Dryades Street
New Orleans, Louisiana 70113

Re: Davis, President of
East Feliciana School
Board #3253

Dear Bob:

Some weeks ago you wrote to me concerning the East Feliciana School Board case and sent a copy of a letter to Judge West about the facts that in the Trenton High School bus Negro children are forced to sit in the back. Has anything happened on this matter? Is there anything you would like me to do? For example, I would be happy to take this up with the Commissioner of Education in Washington if you'd like or undertake anything else that's on your mind. Please let me know as early as convenient to you.

Very sincerely yours,

Carl

Carl Rachlin
General Counsel

CR/tp

July 7/66

out #156

Carl: Enclosed are copies of DeJean and Wms letters. Nothing done. When 5th Cir. comes down with Monroe-Jackson-Claiborne, we'll go for more relief. Meanwhile we're getting facts. If you spoke to Com'r of Ed, it wouldn't hurt any. Sincerely, Jerry

Contributions are deductible for income tax purposes

president; Andrew E. Norman ■ vice presidents; William S. Ellis, Nannette Sachs ■ secretary; Ezra Levin ■ treasurer; Shelby Appleton ■ executive director; Marvin Rich ■ leadership development director; Ronnie M. Moore ■ legal director; Carl Rachlin ■ BOARD OF DIRECTORS; John P. Allison ■ James Baldwin ■ Katrina McCormick Barnes ■ Canon James P. Breeden ■ Dr. Kenneth B. Clark ■ Robert Curvin ■ Charlotte Devree ■ Robert F. Drinan, S.J. ■ John Henry Faulk ■ Doris Freedman ■ Dr. Edward L. Gibson ■ Norman Hill ■ Clarence B. Jones ■ Joann List Levinson ■ Henry Morgenthau, III ■ Dr. William Stuart Nelson ■ Elaine Slater ■ Norman Thomas ■ Rowland Watts ■ Pearl L. Willen

Louisiana
General file

Fred Lacey

MURPHY W. BELL
ATTORNEY AT LAW
971 SOUTH 13TH STREET
BATON ROUGE, LA
TELEPHONE
348-3572

July 14, 1966

Mr. Ellis Howard, Sr.
Route 2, Box 43
Greensburg, La.

Dear Mr. Howard:

In response to Fred Lacey's letter of June 24, 1966, inquiring whether a man can change from party affiliation to no party affiliation (independent) and immediately sign a petition to nominate for Parish office, the law says he cannot. The attorney general's report as quoted in the Louisiana Revised Statues dealing with elections under Section 33 states "no person who has changed or cancelled his party affiliation within a period of 6 months is eligible to sign nomination papers, and should not be certified by Registrar of Voters."

If you feel this ruling is unjust and harmful to your situation, please contact me and I will in turn speak with Carl Rachlin to see if he thinks we should challenge it in court.

Very truly yours,

MURPHY W. BELL

MWB/mew

cc: Fred Lacey

Carl Rachlin, Esq.

Ronnie M. Moore

COPY

file - Legal Dept.

STATE OF LOUISIANA

MONDAY JUN 5 1967

No. 48,554

V.

SUPREME COURT OF LOUISIANA

ROBERT LEWIS

In re: ROBERT LEWIS APPLYING FOR A
WRIT OF CERTIORARI

FOURNET, Chief Justice.

The defendant, Robert Lewis, having been fined $200 and sentenced to 60 days in jail following his conviction on a charge by Bill of Information with the offense of aggravated assault,[1] applied for and was granted a writ of certiorari, but limited to a review of Bill of Exceptions No. 2.

The undisputed facts in so far as pertinent show that on the night of November 20, 1965, the defendant, a local representative of CORE, who had previously received numerous bomb threats because of his participation in civil rights activities, while asleep with his wife and four children in their home in Ferriday was suddenly aroused by the explosion of a bomb thrown at the front of his home, which set it on fire. The defendant, fearful

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1. R. S. 14:37 provides: "Aggravated assault is an assault committed with a dangerous weapon.

"Whoever commits an aggravated assault shall be fined nor more than three hundred dollars, or imprisoned for not more than two years, or both."

the safety of his family and himself, loaded his shotgun and then ushered his wife and children out the back door; and when he, with the assistance of his neighbors, had practically extinguished the fire Ferriday Police Officer Loftin and Patrolman Myrick arrived, parking in the street near the defendant's home. Thereupon the defendant, who was in the street carrying his shotgun with the barrel in the air, addressed the officers in an excited manner, in effect demanding to know where they had been knowing his house was going to be bombed.[2] Then Officer Loftin, who was driving the car, opened the left car door and ordered the defendant to give him the shotgun which he refused to do; and after a brief scuffle the gun was either handed to Herman Brown or it was taken from the defendant by Brown, from whom it was finally retrieved by Officer Loftin, who was also in the scuffle for the gun, while the defendant was being placed in the police car by Officer Myrick. He was then taken to jail and, on December 6, 1965, was charged by Bill of Information with aggravated assault and resisting arrest.[3] Prior to the commencement of the trial on January 6, 1966, Bill of Exceptions No. 2 was reserved to the ruling of the trial judge in granting the defendant's motion for sequestration of the witnesses when he ordered the sequestration of the defense witnesses but exempted the state's only two witnesses from the rule.

(4)

Under the provisions of R. S. 15:371, it is within the sound discretion of the trial judge to order the sequestration of the witnesses at any stage of the trial

---

2. Officer Loftin testified he did not "recall" hearing the defendant say his house had been bombed at the time of the arrest, but, strangely, under cross-examination he testified he heard the crowd say the house had been bombed.

3. This second charge was nolle prossed.

4. R. S. 15:371 provides: "The judge may, at any stage of the trial, order the sequestration of the witnesses. As soon as such order shall have been given it shall be the duty of the sheriff to take charge of the witnesses and to remove them to a place where they shall not be able to see or hear any of the proceedings taking place in court. Nor shall there be, while they shall be sequestered, any communication between them and others or between them and any witness who shall have testified. Any disregard of these provisions by a witness shall disqualify him from testifying and shall subject him to punishment for contempt; provided, that the judge may in all cases, in his discretion, permit any witness to testify; provided, further, that the issuance of such order shall not deprive either party of the right of calling or examining as a witness one who shall not have obeyed the order of sequestration, when such party shall show that the witness remained in court or otherwise disobeyed the order without the knowledge and without the connivance of the party calling him."

in a criminal case;[5] and it is only when the exercise of such discretion is arbitrary or unreasonable, to the prejudicial injury of the defendant in obtaining a fair and impartial trial, that we would be warranted in setting aside a verdict.[6] The reasons for the rule, i. e., to remove the witnesses so they cannot hear or see what is happening at the trial, are to prevent the witnesses from being influenced by the testimony of other witnesses and to also allow effective cross-examination on certain aspects of the case.

We think that the decision of this court in State v. Carter, 206 La. 181, 19 So. 2d 41, is controlling in the case at bar. The facts of that case were peculiarly similar in so far as pertinent to the facts of the case at bar. Those were as stated by the court, " * * * the defendant, a colored man, was charged with attempting to murder two white deputy sheriffs. His plea was self-defense. The two deputies who were assaulted and who were excluded from the courtroom, on the defendant's motion, testified that they were shot by the accused without any cause or provocation. The defendant, on the other hand, testified that he shot at the deputies with one of their own guns after being compelled to disarm them in order to save his own life, after he had been severely and brutally beaten by one of the deputies with the gun. The three deputy sheriffs and district attorney's investigators were permitted to remain in the courtroom during the entire trial although counsel for the defendant, in his motion for a sequestration before the trial started, apprised the judge of the fact that these witnesses would be used against the accused and would testify to purported verbal admissions said to have been made by the defendant." In reversing the defendant's conviction and sentence this court said that the trial judge erred, "in exercising his discretion as he did under the facts and circumstances of this case, and that the accused suffered serious injury and prejudice to his

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5. State v. McAllister, 244 La. 42, 150 So. 2d 557; State v. Rogers, 241 La. 841, 132 So. 2d 819; State v. Lea, 228 La. 724, 84 So. 2d 169; State v. Smith, 216 La. 1041, 45 So. 2d 617; State v. Carter, 206 La. 181, 19 So. 2d 41.

6. See, State v. Palmer, 227 La. 691, 80 So. 2d 374.

substantial rights as a result thereof."

In the instant case the defendant, a colored man, was charged with aggravated assault of a white police officer of Ferriday by pointing the muzzle of a shotgun in his stomach in the presence of Patrolman Myrick. These two officers, as stated before, were the only two witnesses for the state and both testified that the defendant lowered his shotgun shoving it in the stomach of Officer Loftin without any provocation. The defendant, on the other hand, testified that the barrel of the shotgun was at no time lowered or placed in Officer Loftin's stomach but remained at all times up and above his shoulder. The defendant stated that his only purpose for having the gun in his possession at the time was his fear of what might happen to him and his family upon leaving his blazing house in view of the many threats he had previously received which had apparently become a reality, and that under those circumstances he was reluctant to surrender his gun without first being told why.

The trial judge did not append a per curiam to Bill of Exceptions No. 2, but the record reveals that in making his ruling on this phase of the case he merely stated, "It is a rule in this court that officers are not subject to sequestration during a trial because they are officers of the court." In his answer to the writ, however, he stated that his ruling was in accordance with "a longstanding rule of * * * Court in misdemeanor cases that officers of the court be exempted from sequestration except for some unusual circumstances * * *." He said the reason for the application of "this custom" was that the officers testified from notes and a report of the arrest, hence there would be no damage nor prejudice to the defense because one officer might hear the testimony of another officer. Further, he was of the opinion that "even if error was committed in not excluding Officer Myrick from the courtroom, this error had no effect on the ultimate outcome of the case since the conviction of the defendant was sustained by the testimony of Officer Loftin and on some of the defense witnesses' own testimony. The issue of credibility of the defense witnesses as opposed to the prosecution witnesses was never an issue in the case.

The testimony of the Defense witnesses was in many respects contradictory to the statements given by the Defendant himself and, as stated above, in the case of at least two Defense witnesses and certain implications in the testimony of other of the Defense witnesses, the testimony of Officer Loftin was completely corroborated."

In the Carter case, supra, this court held that the trial court in exempting officers from an order sequestering witnesses because of a rule of court exempting such officers was neither sound nor reasonable;[7] and in holding that " * * * the article (R. S. 15:371) does not give a judge an absolute and unreviewable discretion but one that must be exercised in such a way as not to deprive the accused of his right to a fair and impartial trial" reasoned that "If district courts could make rules and rulings that would in effect nullify the provisions of the article, the right granted to the accused therein would be a useless and vain one."

Regretfully, our appreciation of the evidence does not support the factual findings of our learned brother below. Initially, we might point out that the evidence shows that the testimony of Officers Loftin and Myrick was given from their independent recollection; and we are at a loss for his conclusion that "the issue of credibility of the Defense witnesses as opposed to the prosecution witnesses was never an issue in the case." While it is true that in many immaterial aspects, the testimony of the several defense witnesses does not coincide with that of the defendant, on the crucial issue, i. e., whether or not the defendant pointed the barrel of the shotgun in the stomach of Officer Loftin, all of the defense witnesses except two[8] testified that Officer Loftin was not threatened nor assaulted with the gun as was testified to by the two officers.

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7. This court specifically overruled the holding in the case of State v. Bates, 140 La. 833, 74 So. 165, relied on by the prosecution in State v. Carter, that such rules were proper.

8. Roosevelt Bosley testified he was not present when the alleged assault occurred as he had gotten wet while fighting the fire and went home to change his shoes. Charlie Hankson stated he was inside the house fighting the fire when the officers arrived, and that by the time he came outside they had already picked up the defendant and left.

While the the ruling in the Carter case involved a trial by jury, whereas the case at bar was tried by the judge alone, nevertheless, the rules by which the courts are guided in criminal cases whether by the judge alone or by the jury are the same. The only question involved in this case is whether or not the reasons given by the trial judge show an abuse of his discretion under the facts and circumstances of the case.

As previously pointed out, the reason given by the trial judge in his ruling in this case was neither legal nor sound, and the basis for his conclusion that the cause of the defendant was not prejudiced is not supported by the record. We think, under the facts and circumstances of this case, it was a distinct advantage to the state and a disadvantage to the defendant to allow Patrolman Myrick to remain in court and testify not only in chief but also in rebuttal; and for all practical purposes the defendant was deprived of a substantial right to the effective cross-examination of Officer Myrick.

For the reasons assigned, the conviction and sentence are annulled and the case is remanded to the lower court for a new trial.

COLLINS, DOUGLAS & ELIE
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April 5, 1968

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
504 523-5197
NORMAN C. FRANCIS
OF COUNSEL

Mr. Carl Rachlin, Esq.
S.E.D.F.R.E.
164 Madison Ave.
New York, N. Y. 10016

Dear Carl:

I regret the long delay in replying to yours of March 12. I have written for the cataloques from all of the state universities but to date haven't received any officially, I already have Grambling and Southern.

I haven't pursued this whole matter with the enthusiasm that I first intended because with few exceptions the entire black community has not received this notion with favor.

In answer to the more pointed questions any student who graduates from a Louisiana High School is eligible to attend any of the state colleges; Negroes are no longer encouraged to go to a Negro college. There are one or two Whites at each of the Negro colleges.

You will hear more from me shortly.

Sincerely,

LOLIS E. ELIE

LEE/jj

Louisiana

Southern University } all Negro Colleges
Grambling } State Schools

(a) Means of maintaining segreg. schools
(b) Segregated - inferior educat.
— HEW has report showing inferior ed
Derek Bell - has report showing inferior values

Theory Action - segreg schools - inferior

Alternatives Relief
① Close schools & distribute students
or ② Make schools part of current state education

— So close to Baton Rouge.
Change present ~~[illegible]~~ character
Louisiana - any grad of state high school can go to state university.

ational News and
WIREPHOTO

NEW ORLEANS, FRIDAY MORNING, JULY 30, 1965
THE TIMES-PICAYUNE

Bogalusa Patrolman, Officials Convicted

IN FEDERAL DISTRICT COURT Thursday were three law enforcement officials of Bogalusa whom Federal Judge Herbert W. Christenberry convicted on civil contempt charges Thursday. From left are Pfm. Donald Penton of the Bogalusa police force; Claxton Knight, the city's police chief, and Arnold Spiers, public safety commissioner. The judge held that they had violated his order to protect Bogalusa civil rights demonstrators.

—Photo by The Times-Picayune.

Top Law Enforcers, Rookie Officer Found in Contempt

U.S. Judge Holds Three, Orders Two to Appear

The two top law enforcement officers of Bogalusa and a city patrolman were convicted of civil contempt Thursday in federal court.

District Judge Herbert W. Christenberry held that Police Chief Claxton Knight and Commissioner of Public Safety Arnold Spiers violated an injunction he issued July 18 in which he ordered them to take all reasonable steps to protect civil rights demonstrators.

The judge also held in civil contempt a rookie policeman, Pfm. Donald Penton, who was seen in motion pictures standing by while a Bogalusa barber pumped water on pickets at Bogalusa's LaPlaza shopping center on July 17.

Movies and still pictures of this incident were shown to the court during the contempt hearing which began Monday. Judge Christenberry ordered that Penton and Sgt. Reubin Sumrall, also of the Bogalusa force, be brought into court.

SUMRALL IN HOSPITAL

Sumrall did not appear Thursday and his attorney reported that he was confined to a Bogalusa hospital. His case was continued. The U.S. Department of Justice earlier in the day had filed civil and criminal contempt charges against both men. Penton pleaded not guilty to the criminal charge.

Judge Christenberry, after

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announcing his findings, directed the Justice Department attorneys and a group of attorneys for the Congress of Racial Equality to prepare a decree based on his findings and containing proposed sanctions to be imposed on the three men.

The court ordered that these proposals be submitted to him at 10 a. m., Friday. The three defendants were ordered to be present.

John Doar, chief of the civil rights division of the Justice Department, refused to comment on what sanctions might be proposed.

OTHERS ARE CLEARED

Judge Christenberry found that the evidence brought out during the hearing did not support a contempt finding against Walter Vertrees Adams, a Washington Parish deputy sheriff, and Ptn. John Riley and Capt. Haymes Wascom, both of the Bogalusa police force.

A petition by the CORE attorneys that Col. Thomas D. Burbank, superintendent of state police, as well as the state police be included in the injunction issued July 10 was denied.

The judge commented in this respect, "It is very fortunate that Col. Burbank and his men have performed their duty in the way they have."

Also denied by the court was a plea by the CORE attorneys that Washington Parish Sheriff Dorman Crowe be ordered to dismiss Deputy Adams.

Before announcing his decision, Judge Christenberry said that when he issued the preliminary injunction "it was not my thought that it would be necessary to find someone in contempt of it. It was issued to protect the plaintiffs in the exercise of their constitutional rights. It was my sincere wish and hope that, supported by the injunction, the local police would furnish the protection to which the plaintiffs were entitled."

'AUTHORITY ABDICATED'

He added: "However, it is clear from the evidence that instead of doing what the injunction enjoined them to do, the chief of police and Commissioner Spiers did not do that, but were willing to abdicate their authority and place the burden on Col. Burbank and the state police."

The court said that the crisis in Bogalusa offered an opportunity for local officials to perform their duty. "We have heard a lot about home rule and local self-government. I would be ashamed to have to call upon the state police to

He said that he knows the vast majority of the people in Bogalusa are law abiding "but there is a hard core who simply will not recognize that Washington Parish is a part of the United States and subject to the laws of the United States. They are responsible for all of the trouble and they could be controlled if the local authorities want to do so."

Earlier in the day, John R. Martzell, one of the defense attorneys, rested his case without placing Spiers, Knight, Wascom or Riley on the witness stand.

ADAMS DENIES GUILT

In another phase of the legal action growing out of the Bogalusa racial trouble, Judge Christenberry accepted a not guilty plea from Deputy Adams to a criminal bill of information filed by the government charging him with violating the civil rights of civil rights workers by beatings and harassment. The court ordered the matter placed on the regular criminal trial docket.

BURBANK QUESTIONED

After Martzell rested the case for his clients, Col. Burbank took the stand and was questioned by Assistant State Attorney General John E. Jackson, Jr., as to the participation of the state police in the Bogalusa situation.

The police superintendent testified that he was directed by Gov. John J. McKeithen in April to go to Bogalusa and offer whatever assistance the state police could give the community.

He said that Maj. Tom Bradley was placed in exclusive command of the troopers in Bogalusa and at times the strength of the state force in Bogalusa ranged from as little as eight men to as many as 200 of the total of 583 officers on the force.

He said that the Bogalusa assignment "sapped the strength of the state police."

ARRESTS RECOUNTED

Col. Burbank said that since the court's injunction was issued the state troopers have arrested 13 persons who were not pickets or CORE workers and there were 10 arrests of civil rights workers.

He testified that on July 16, when fighting broke out at the LaPlaza Shopping Center, there were about 30 or 35 troopers in the vicinity but he had no request for assistance at the center itself and he considered this the responsibility of the local police.

The state troopers were patrolling the route of a parade, he said, and it was only after July 16 that he was requested for help with picketing. He said that on July 19 he ordered Maj. Bradley to send troopers to any picketing not adequately covered by local officers.

Col. Burbank said that when he viewed the movies of incidents at the LaPlaza center on July 16 and 17 he could see state troopers standing by and that since he has seen the movies he has ordered an investigation and the men in question will be disciplined if there is sufficient evidence to warrant it.

2 TESTIFY FOR ADAMS

District Attorney W. W. Erwin of Washington Parish placed two witnesses on the stand on behalf of Deputy Adams who allegedly had mistreated Miss Jacqueline Butler, a civil rights worker, when she was arrested at the shopping center on July 16.

Adams placed Miss Butler in a police car and she alleged that when they arrived at the police station he pushed her through the door and then shoved her against a wall. She claimed earlier in the hearing that her head hit the wall and she blacked out.

Sidney Jones and Ralph White, both members of the Bogalusa police force, testified that they were in the jail while the woman was in a cell with other rights workers and that at one point, after a doctor had been called to examine Miss Butler, one of the prisoners said, "Well, I guess we fooled them with that shock act."

The officers said that while in the cell Miss Butler led the other prisoners in the singing of freedom songs.

Earlier at the hearing a CORE attorney testified that he had called a doctor to examine Miss Butler in the cell and that the doctor found her in a dazed state and unable to communicate because of the blow on her head.

Adams took the stand and said that he did not mistreat the woman and that he placed her in the police car "like I put my mother in."

PICKETS AT BOGALUSA

Meanwhile in Bogalusa, 17 pickets appeared before downtown stores early Thursday morning.

During the afternoon, 14 more were on the scene at the LaPlaza Shopping Center. Five restaurants were tested during the noon hour, with all serving Negroes.

However, Alford's Roundtable Restaurant would not serve white civil rights workers. According to a Bogalusa police official, Mrs. Alford stated the court had ordered her to serve the Negroes, but not the whites.

Other places tested were Graham's Cafe, Acme Cafe, Redwood Cafe and the LaPlaza Restaurant.

Request for a parade permit for 5:30 p. m. Friday has been filed at the Bogalusa city hall. No parade was held Thursday due to the court hearings in New Orleans.

Bogalusa Cops Have Week for Protection Plan

Bogalusa's two ranking police officials have a week to set up an ironclad plan which will guarantee the protection of civil rights workers.

If Safety Commissioner Arnold Spiers and Police Chief Claxton Knight fail to do this they will be committed to the custody of the attorney-general and face $100-a-day fines.

U.S. District Judge Herbert W. Christenberry handed down the ultimatum here yesterday after finding Spiers and Knight guilty of civil contempt.

JUDGE CHRISTENBERRY ruled that the two officials did not comply with an injunction he issued July 10 ordering that they take all reasonable means to protect civil rights demonstrations.

The judge adopted, with a few changes, sanctions proposed by John Doar, head of the Justice Department's civil rights division, in open court here yesterday morning.

The order signed by Christenberry provides that if Spiers and Knight do not show that they are complying with his instructions within seven days they will be committed to custody of the attorney general and be compelled to pay a fine of $100 each day until they do comply.

THE JUDGE ALSO found Donald Penton, a Bogalusa policeman, in civil contempt. He ordered that Penton be bound over to custody of the attorney general and pay a fine of $50 a day unless he complies with the July 10 injunction and shows that he has informed himself of the protection plan within five days after the officials file it.

Penton was cited for civil contempt after FBI movies showed him standing by while a barber hosed down civil rights pickets in Bogalusa.

Christenberry instructed Spiers and Knight to hold training classes for police officers and obtain signed statements from each policeman stating that he understands and will comply with the protection plan.

THE TWO OFFICIALS also were ordered to personally observe the actions of policemen stationed at civil rights demonstrations.

They also will be required to file monthly reports with the court for one year showing that the protection plan remains in effect.

The judge turned down requests by CORE attorneys that the police report to the court on a weekly basis and that the officials pay damages for physical injuries received by pickets attacked at LaPlaza Shopping Center July 16-17.

Meanwhile, segregationists and Klansmen were summoned to a rally tonight at nearby Cross Roads, Miss. It marks the third Klan conclave in 20 days. Like the other two meetings, this one will be held in a cow pasture.

Sanctions Due For 2 Bogalusa Police Officials

The list of proposed sanctions to be imposed on Bogalusa's two top police officials and a patrolman was to be filed in federal district court in New Orleans today.

Federal Dist. Judge Herbert W. Christenberry yesterday directed United States Asst. Atty. Gen. John Doar and Congress of Racial Equality attorneys to draw up the proposed sanctions against Bogalusa Police Chief Claxton Knight, Public Safety Commissioner Arnold Spiers and Ptn. Donald Penton.

The three were found in civil contempt yesterday by Judge Christenberry for not giving adequate protection to civil rights workers in Bogalusa in keeping with a Christenberry injunction of July 10.

JOHN MARTINEAU, attorney for Knight and Spiers, said he had no idea what the sanctions might involve. In civil contempt cases, the judge specifies what a defendant must do to avoid punishment. If the defendant complies, punishment may be withheld.

Martineau said that Doar may have indicated his position regarding sanctions in arguments to the court yesterday. Doar criticized the Bogalusa officials for what they did not do to maintain order. He contended Bogalusa's police force needs a sensible communications network within itself, an inspection system whereby Knight and Spiers can see what is being done, a system of discipline, and an efficient system of communication with state police.

IN ADDITION TO the civil contempt convictions, Knight, Spiers and Penton will face criminal contempt charges later this year in connection with Christenberry's injunction.

Judge Christenberry freed Washington Parish Deputy Varnees Adams and Bogalusa policemen John Riley and Haymen Wascom from civil contempt charges brought by CORE.

He denied a petition by CORE attorneys that Washington Parish Sheriff Dorman Crowe be ordered to discipline Adams, and a CORE petition that State Police Supt. Thomas D. Burbank and state police be included in the July 10 injunction.

"IT IS VERY fortunate that Col. Burbank and his men have performed their duty the way they have," said the judge.

Ptn. Penton was convicted of civil contempt after movies showed him standing by while a barber hosed water on two white pickets.

Federal Bureau of Investigation and television movies of racial turmoil, with policemen standing by watching, were strong points in the Justice Department's case.

THE FILMS showed there is a "hard core" of militants in Bogalusa who "simply will not recognize that Washington Parish is part of the U.S. and subject to the laws of the U.S.," said Judge Christenberry.

The judge said he also detected in the films a desire by police officials to remain in the "good graces" of the militant whites.

Chief Knight and Commissioner Spiers has been "perpetually willing to abdicate their authority and place most of the burden" on the state police, he said.

PICKETING CONTINUED yesterday in Bogalusa. Five restaurants were tested at noon, with all serving Negroes. One eating place, Alford's Roundtable Restaurant, would not serve white civil rights workers. A Bogalusa police official said the operator said the court had ordered her to serve Negroes but not the whites.

Other places tested were Graham's Cafe, Acme Cafe, Redwood Cafe and the LaPlaza Restaurant.

A request for a parade permit for 5:30 p. m. today was filed yesterday at city hall.

N.O. TIMES PICAYUNE 7/28/65

Bogalusa Policeman Wins Contempt Count Dismissal

Trial of Others Continues in Federal Court

A civil contempt of court charge against one Bogalusa police officer was dismissed Tuesday by Federal District Judge Herbert W. Christenberry.

The judge ordered the dismissal of the charge as to Bernard Williams, a patrolman on the Bogalusa force, after the officer took the witness stand and testified in his own behalf.

Others who are being tried before Judge Christenberry for civil contempt as a result of alleged incidents during racial demonstrations in Bogalusa include Arnold Spiers, Bogalusa commissioner of public safety; Police Chief Claxton Knight; Walter Vertrees Adams, a Washington Parish deputy sheriff; and police officers Haymes Wascom and John Riley.

—Associated Press Photo.
MAYOR JESSE CUTRER
Leaves federal court.

In Bogalusa Tuesday, a scheduled parade by civil rights forces was called off because leaders of the Voters League were in the federal court in New Orleans.

PICKETS APPEAR

White pickets appeared in front of the post office in the papermill town where John Dear, chief of the civil rights division of the Justice Department, has established an office. One carried a sign reading, "Mr. Dear, You Have Indicted the Ku Klux Klan, How About the Dangers for Dogpatch?"

Two white youths then picketed a hotel where members of the FBI are staying. One of the youths was arrested for cursing an officer but was released in the custody of his father.

The contempt allegations in federal district were brought by the United States Department of Justice and a group of civil rights demonstrators who are represented by attorneys for the Congress of Racial Equality. They contend that the police officials have violated an injunction issued July 10 by Judge Christenberry directing police to provide all reasonable protection for the demonstrators.

DISMISSAL ASKED

Both the Justice Department attorneys and the CORE group rested their cases during Tuesday's session, and at that point John R. Martzell, attorney for Williams, Spiers, Knight, Wascom and Riley, asked that the charges be dismissed as to his clients.

He contended that they were not subject to civil contempt because the plaintiffs had not shown a pattern of activity which might continue in the future. The judge reserved judgment on the motion.

QUERIED ON REMARKS

When he was on the witness stand, Williams was questioned about allegedly insulting remarks he had made to a demonstrator while she was in the Bogalusa jail after her arrest at the La Plaza Shopping Center on July 16.

Williams said that he was busy taking pictures of the pickets and that every time he would call one into the room for photographing he noticed one of the others grinning. He said that he told her "I fail to see anything funny. I've been working all day trying to protect you, I haven't had any time to spend with my family, and I fail to see anything funny."

He denied that he used abusive language but said that he later realized that he should not have said anything.

Four other defense witnesses were called to the stand Tuesday before Judge Christenberry recessed the hearing until Thursday at 10 a. m. Wednesday is the court's regular day for the hearing of motions in civil cases and criminal arraignments.

[illegible]

Judge Christenberry halted the hearing briefly Tuesday after a morning recess to personally investigate a reported altercation between two white persons and a Negro.

Witnesses said that the altercation took place on the ground floor of the Wild Life and Fisheries Building where the federal courts are located.

Those who said that they witnessed the incident included U.S. Commissioner Fritz H. Windhorst and Nils Douglas, a CORE attorney.

Principals in the incident allegedly were Sam Barnes, a Negro who is under charges of carrying a concealed weapon in Bogalusa, and two brothers, Donald Penton and Denver Penton.

The commissioner told the court that he heard one of the white men tell Barnes not to

ONE IS CLEARED OF CONTEMPT

use certain vulgar language to his brother and if you do it again I'll fix you."

Douglas said that he heard Barnes use a vulgar term in relation to Denver Penton and Donald Penton told Barnes "You can't say that to my brother. I can't do anything about it here, but if you do it again I'll fix you."

JUDGE WARNS THREE

After hearing the versions of the alleged altercation Judge Christenberry said "We'll let this matter drop right here. He warned the two white men and Barnes against any further such incidents.

First witness called by Alvin Bronstein, a CORE attorney, after the government rested was Miss Jacqueline Butler, a resident of St. Louis, Mo., who has been working for CORE in Bogalusa for several months.

She said that she was arrested at the LaPlaza Shopping Center with other pickets on July 16 and when taken to the police station was mistreated by the defendant Adams.

She claimed that when Adams took her from the police car he grabbed her by the collar and twisted it so that she choked, that he pushed her into the jail and then threw her up against a wall. The witness claimed that her head hit the wall and that she became dizzy and later blacked out.

Miss Butler also testified that a crowd had gathered outside the jail and she was afraid to leave after her bond had been signed. She said that she stayed at the jail until other CORE workers came for her but that officers harassed her while she was waiting.

SAW PUSHING, CLAIM

Another CORE witness, Miss Carolyn Bryant of Bogalusa, claimed that she saw Adams push Miss Butler into the wall and then turn to other officers and say "Did you see that," as though Miss Butler had done something herself.

Miss Bryant testified that officer Williams used abusive language to her and called her "trash" when she laughed while pictures were being taken.

Miss Ruth Youngblood, another Bogalusa CORE worker, also claimed that she saw Adams mistreat Miss Butler.

Charles Bellows, a white CORE demonstrator, told the court of being beaten on July 16 by three or four white men at the shopping center. He said that he did not return the blows but was arrested for disturbing the peace by fighting.

[illegible] demonstrator, Jack [illegible] of Los [illegible] said that he [illegible] white [illegible] said that the officer [illegible] arrest [illegible] being [illegible] said that he [illegible] on July 16.

HOSING RELATED

One of the CORE attorneys trying the case, Jeremiah S. Gutman, took the stand and testified that on July 17 he saw Capt. Wascom of the Bogalusa police at the shopping center and that the officer watched Ray Risner, a barber, hose down pickets.

The attorney said that when he went to Capt. Wascom and asked him why he did not arrest the barber for assault he was told that no arrest would be made since the matter was on private property. He said that he would "look into it," the attorney said.

Gutman also testified that he saw Miss Butler in jail and that she was lying face down on a cot in a dazed condition.

Those called by Martzell for the defense included John Riley; Assistant Police Chief L. C. Terrell; Robert G. Rester, Bogalusa city attorney; and Frank J. Carrara Jr., an Associated Press reporter.

Riley, one of the defendants, said he saw "10 or 12 people" standing outside the jail after Miss Butler was released but he claimed that they were there for a meeting in the court room with the mayor. He denied having any conversation with Miss Butler other than telling her to sit down and wait for the CORE workers to pick her up.

UNIT DESCRIBED

Chief Terrell testified that since July 16 the police department has a flexible unit which can be deployed to any spot where trouble may develop. He said that foot patrols have also been deployed to spots where picketing will be held.

The city attorney said that he explained Judge Christenberry's injunction to the police department in detail on July 12 and told them that they should make no comments to picketers or marchers and should break up harassing groups.

Carrara testified that CORE spokesmen told the press and the Federal Bureau of Investigation of plans to picket the shopping center, but not the police. He said that CORE representatives told him it would be "more of a real test" if police were not present.

At Tuesday's morning session Robert Owen, regional head of the Justice Department's civil rights division, called Capt. Thomas J. Mixon of the Bogalusa police and Chief Terrell to the stand.

INSTRUCTIONS CITED

Capt. Mixon was questioned at length by Owen as to any instructions he may have received from Spiers or Knight concerning the handling of pickets and demonstrators.

The Bogalusa police captain testified that he could recall having seen one or two letters from Spiers to Knight in which the safety commissioner instructed the police chief to "keep the peace and protect the pickets."

Capt. Mixon said that there were many instructional meetings held at which his superiors told the entire police force of the duty to protect pickets and demonstrators and keep the peace as well as possible.

The witness said that there were so many of these meetings and these instructions were given so many times he could not remember each occasion.

'DO THEIR UTMOST'

He also said that on July 19 there was a departmental meeting at which Spiers and Martzell spoke and explained the duties of the police under Judge Christenberry's injunction. He said that Spiers told the police that they "had to do their utmost to protect the pickets and everyone concerned."

Under questioning by Bronstein, the police captain said that pickets arrested at the shopping center July 16 were charged with violation of a city ordinance which limits the number of pickets to not more than two for each establishment.

At this point Judge Christenberry said "Actually, the inaction of the police department in allowing others to block the sidewalk caused the pickets to be in larger groups. If it had not been for this they would have been strung out so that there would not have been more than two in front of each establishment."

When questioned by Martzell, Capt. Mixon said that at a meeting on July 19 and at prior meetings police were told [illegible] the injunction [illegible] disciplined [illegible] Assistant City [illegible] stated that [illegible] emergency [illegible] the shopping center.

QUESTION IN MIND

[illegible] said that [illegible] day he did go to the center and when he saw that a crowd had gathered and pickets had been hosed down he dispersed the crowd himself. He told the court that there was a question in his mind as to whether or not he could make arrests on private property.

Asked by Owen if either Spiers or Knight had instructed him concerning arrests on private property, the witness said that he was instructed not to make arrests of pickets either on private or public property unless they were engaged in a breach of the peace.

Judge Christenberry then asked "I don't understand. Is it your understanding that as a police officer, if you see a law violation you can't do anything about it if it is on private property?"

The assistant chief replied that this was not his understanding but that the question had been raised by the property owners at the center and they had obtained arrest warrants for the pickets the day before for violation of the picketing ordinance.

PHOTOGRAPH SHOWN

During the officer's testimony Judge Christenberry interrupted to show him a photograph which has been placed in evidence and asked the witness if he could identify a Bogalusa policeman who was standing in the background while a barber sprayed water on a picket at the center.

Chief Terrell identified the policeman as Ptn. Donald Penton.

"Did you ask him why he did nothing?" the judge asked.

The witness said that he did not see the officer when he arrived at the center and when asked by the court if he asked any of the other officers there why they did not put a stop to the harassing of the pickets Chief Terrell said that he considered it an emergency and had not known what had happened "and it was my intention to do the best I could."

Judge Christenberry commented "The emergency will continue as long as the police fail to do their duty."

When the judge asked the chief if he was interested in disciplining his men, the witness replied that this was not his problem but added "I will share some of the responsibility."

BURBANK NOT DEFENDANT

Col. Thomas H. Burbank superintendent of the state police, is not a defendant in the contempt proceedings but has been present in the court for the hearings besides the CORE group is seeking to make him party to judge [illegible]

[illegible] Bogalusa [illegible] identified [illegible] reported [illegible] Lt. [illegible] a defendant. And [illegible] correctly identified as [illegible] who has no

2 Bogalusa Cops Called to Face Charges

N.O. STATES ITEM 7/29/65

Two Bogalusa Cops Guilty Of Contempt

Federal District Judge Herbert W. Christenberry today fined Bogalusa Chief of Police Claxton Knight and Police Commissioner Arnold Spiers guilty of civil contempt for failure to obey a federal court injunction requiring protection of civil rights pickets.

By BERT HYDE

Two Bogalusa police officers, who were shown in a film standing by while civil rights demonstrators were mistreated, were called into court today to face civil and criminal contempt charges.

Patrolmen Rubin Sumrall and Donald Penton were accused of failing to protect pickets in the LaPlaza Shopping Center on July 16. Judge Herbert W. Christenberry ordered that the two be brought to court later today.

THIS DEVELOPMENT came in a federal court hearing here on racial violence in Bogalusa. United States Attorney John Doar said Penton would appear today, but that Sumrall was in Bogalusa and could not.

After viewing the film Tuesday, Judge Christenberry ordered the two brought in.

Two LaPlaza center merchants and a Bogalusa attorney were called to testify today. They were Michael Campbell Mattox, who operates a building materials store, and Charles J. Rowe, operator of a department

(Turn to Page 6, Column 1)

store, and attorney John N. Gallaspy, who is presently ad hoc judge of the Bogalusa City Court.

IT WAS evident that the government and CORE attorneys were seeking to prove that pickets arrested at the LaPlaza Center on affidavits on the afternoon of July 16 were arrested before the affidavits were sworn out.

Mattox told the court that he went to the office of Judge Gallaspy some time between 1:30 and 3 p. m. and on the advice of Rowe. Mattox said he signed the affidavits but did not notice whether they were filled out or were blank.

He said he was told that this was the one way to get the pickets away from his store; that he has little knowledge of the procedure.

Rowe told the court that he went to lunch at the LaPlaza Restaurant shortly after 1 p. m. He was in the place only a few minutes when a clerk in his store told him 10 pickets were in front of his department store.

ROWE SAID he went to the pickets and advised them that if they did not stop picketing he would swear out arrest warrants against them since this was private property.

He said the lessor of stores in the Mitchell Corp. Rowe said he went to the office of Judge Jones, who is the city judge, where he met acting Judge Gallaspy.

With him was another merchant, Bruce White. They signed warrants which were filled out with the city ordinance violation which prohibits more than five pickets in front of a store, he testified. He said there were no names written ino the affidavits.

ROWE SAID that Mrs. Geraldine Pierce, secretary to Judge Gallaspy, called Bogalusa police for an officer to serve the warrants. She was told there were none available because all the police were busy protecting the pickets and the marchers.

Rowe said he returned to his store and that police were forcing everyone in the center out of the parking area.

He said he complained to Col. Thomas Burbank, superintendent of the state police, that customers were being run off but the pickets were being allowed to remain. He said Col Burbank told him he had to protect the pickets and e wasn't worried about the customers.

Attorney Gallaspy said he had been appointed judge ad hoc for the city court during the vacation period of Judge Jones.

HE SAID Rowe and White came to his office about 1:30 p. m. and asked for affidavits for arrest of the pickets. Gallaspy said that Bogalusa had recently adopted an ordinance which prohibited more than two pickets per store.

The judge ad hoc explained to the court there were 10 pickets and that there are more than five stores but it was his understanding that all were walking together.

He said he issued "John Doe" affidavits and that he did not quote the names because that was the first time he had made out such affidavits.

He said he then called Chief of Police Claxton Knight and Police Commissioner Arnold Spiers and explained that he had just signed the warrants and asked that they have an officer pick them up.

THIS WAS shortly before 2 p. m. and the police officials said that all of their officers were presently tied up. However, he said it was only minutes before a patrolman showed up and picked up the warrants.

"I fixed the bond of the pickets at $500 each after their arrest," Gallaspy said.

Asked by Christenberry if this wasn't a rather high bond for a city misdemeanor, he said:

"I have fixed a number of $500 bonds while I have been serving as judge ad hoc . . . considering the people, where they are from and so forth and whether they are coming back to honor their bond," he said.

Judge Gallaspy explained to the court that it was he who was wearing the black checked coat, talking to Rap Risner as the latter was squirting a water hose on the pickets. He was shown in the motion picture.

HE SAID HE told Risner to quit, that this has gone far enough. He said Risner quit hosing the pickets and went back into his shop.

Risner has since been suspended as a city policeman for his actions.

Gallaspy said that he pickets were to go on trial next Monday in his court. At that time Judge Jones probably will be back to preside, he said.

"BUT IF HE is not," he said, "I will preside."

Pfc. Sidney Jones was the first witness called today in the defense of Walter V. Adams on his civil contempt charge. Washington Parish District Attorney W. W. Erwin is handling the Adams defense.

It has been alleged that Adams mistreated some of the picket prisoners on July 16. Jones said that after pickets were jailed the women were placed on one side of the jail cells and the men on the other.

HE SAID that a doctor went in and examined all 10 of the prisoners. After the doctor left one of the pickets, Jacqueline Butler, who said that she had a fainting spell, was leading freedom songs.

Jones also said that he heard one of the prisoners say, "We sure fooled the doctor with that shock act," didn't we?"

Neither Jones nor Pfc. David White, who was also on duty at the jail tier at the time, was able to identify the picket who had made the statement about the shock "act."

Earlier, Col. Thomas D. Burbank, superintendent of state police, sought to show in his testimony that he and state police should not be cited for failure to provide protection.

Col. Burbank pointed out that the state police numbering from 11 to more than 350 have been on duty in Bogalusa since April 8. The colonel said they went to Bogalusa on order of Gov. John J. McKeithen at the request of Bogalusa Police Commissioner Arnold Spiers, Mayor Jess Cutrer and Police Chief Claxton Knight.

He said they were there to assist Bogalusa police in maintaining order. He said number of state police there varied from time to time as he himself considered the situation to be more or less tense.

The Congress of Racial Equality has asked a mandatory injunction to require the defendants to protect civil rights pickets in Bogalusa.

Col. Burbank said that Maj. Tom Bradley has been in sole command of the troopers at Bogalusa, but that he, himself, has visited Bogalusa more than 30 times during the race crisis.

The two have conferred daily, he said, if not in person, by telephone.

HE WAS in Bogalusa on July 16, Col. Burbank said, the date that the U.S. government and CORE have charged civil and criminal contempt against the federal court order had been committed.

So far the court has cleared one Bogalusa policeman, Bernard Williams, of civil contempt.

REGISTRATION SUIT IS ENDED

Sep. 16, 1965

Judge Ellis Takes Case Under Advisement

Federal District Judge Frank B. Ellis took under advisement Wednesday a suit brought by Negroes seeking a speedup in the operations of the Orleans Parish registration office.

After oral arguments were presented, Judge Ellis said that he will issue a short written judgment; but he did not indicate when the decision will be filed.

Negro plaintiffs seek to enjoin Orleans Parish Registrar of Voters A. P. Gallinghouse from using practices which they allege are slowing up the registration process since the Voting Rights Act went into effect.

Attorneys for the Negroes argued that the registrar is applying stringent standards for identification and proof of residence. They asked that the court set up objective standards for the registrar to use.

Judge Ellis expressed the view that from the evidence produced during the trial he did not consider the actions of the registrar a tightening up process but "basically an effort to keep his house clean."

He also told the attorneys for the Negroes he thought that the case "acomplished the result you sought" in that it brought the activities of the registration office to the forefront.

Negro plaintiffs were represented by James M. Shallow, Milwaukee, Wis., and Robert Collins, a representative of the Congress of Racial Equality's scholarship, educational and defense fund, and Earl Amadee, both of New Orleans.

Sidney W. Provensal Jr., representing Gallinghouse, and Assistant State Attorney General William P. Schuler, representing the State Board of Registration, claimed in their arguments that the suit was a "shotgun action" containing many complaints but proving none.

They claimed that actions of Gallinghouse in requiring proof of identity and residence did not have the effect of freezing out any Negroes since the requirements were applied without discrimination to whites as well.

Mrs. Marion Hartman, a deputy registrar, was called to the witness stand by Provensal; and she testified that there has been no slowdown at the office, but since illiterates have been eligible for registration it has taken as long as 45 minutes to register one such person. She said that she never tried to influence any applicant in connection with his choice of political affiliation.

Orleans Registers Total of 330 to Vote

The Orleans Parish Registrar's Office Wednesday reported that 237 Negroes and 93 whites were registered during operating hours from 9 a. m. to 8 p. m.

Among the Negroes, 48 were illiterate, the office said, with one unable to write his name. Two illiterate whites were also registered.

All person who came to apply were registered, an office spokesman said, and no applicants remained at closing time.

NEGROES FINISH WITH TESTIMONY

Times Picayune

Tactics to Delay Voter Signup Alleged

Sept. 15, 1965

Attorneys for Negroes seeking to enjoin Orleans Parish Registrar of Voters A. P. "Tim" Gallinghouse from using alleged delaying tactics in the registration of Negroes completed the presentation of their case Tuesday in federal court.

The attorneys for the plaintiffs have sought to prove through witnesses that Gallinghouse and his deputies have been unreasonable in their demands for proof of identification and residence in an effort to slow down Negro registration under the Voting Rights Act.

At the conclusion of Tuesday's session Judge Frank B. Ellis recessed the case until 2 p. m., Wednesday. Sidney W. Provensal Jr., attorney for Gallinghouse, told the court that the defense will be able to complete its case Wednesday afternoon. Other defense attorneys include William P. Schuler, an assistant state attorney who represents the State Board of Registration, a defendant along with the registrar, and Jpseph Laura.

WITNESSES CLAIM DELAY

Two of the principal witnesses for the plaintiff claimed Tuesday that Gallinghouse and his deputies have engaged in frustrating delaying tactics since the registration drive was launched Aug. 11 by the Interdenominational Ministerial Alliance.

They were the Rev. Avery C. Alexander and the Rev. A. L. Davis Jr., both officers of the IMA, who were called by James M. Shellow, Milwaukee, Wis., and Robert Collins and Earl Amedee, both of New Orleans, attorneys for the plaintiffs.

The Rev. Mr. Alexander testified that many Negroes have been turned away from the registration office because of insufficient identification although the Negroes have produced "just about everything under the sun."

He said that the Negroes have produced drivers licenses, fishing licenses, leases, department store credit books and many other types of identification.

LONG TIME CLAIMED

He also claimed that deputy registrars take 20 minutes for each applicant, or three an hour, and said "Even I could do better than that."

The Rev. Mr. Davis president of the IMA said that at the beginning of the drive he and other members of the IMA committee met with Gallinghouse to discuss the slowness of the procedure and the alleged harsh requirements for identification.

He said that they made several suggestions to help speed up the process and even offered to pay for extra deputies "white or black" but were refused on every point.

The witness said that he received many complaints and that the primary basis of the complaints was the proof of identification. "At one time a library card would be accepted, another time it was not. At one time leases from the project would be accepted and later they were turned down," he contended.

"NO CONSISTENT POLICY"

He complained that there has been no consistant policy in this respect on the part of the registrar's office.

Attorneys for the plaintiffs also sought to show through three witnesses, two of them illiterate, that they were registered as being members of a political party which was not in accordance with their wishes.

Shellow also offered to file with the court a statistical compilation showing that this has been done in a great many other instances.

Charles Knight, 1480 Milton, Apt. C, testified that when he went to the registration office and told the deputy that he could not read and write the deputy filled out his card but did not ask him about his party affiliation.

GOP SHOWN ON CARD

Shellow introduced into evidence his registration card showing his affiliation as Republican. He testified that if he had been asked he would have requested registration as a Democrat.

Mrs. Madeline Jennings, 1310 Simon Bolivar, also testified that she registered as an illiterate and was not asked about her party affiliation. Her registration card, placed in evidence, showed that the States' Rights Party had been circled for her. She said that she wanted to be a Democrat.

Mrs. Florence M. Anderson, 1301 Simon Bolivar, who registered as a physically disabled person, claimed that she told the deputy who registered her that she wanted to be a Democrat but when her card was introduced into evidence it showed that the States' Rights Party had been circled for her.

Two witnesses, Mrs. Esma O'Connor, 2619 Sixth, and Mrs. Dora Frank, 1672 Chippewa, testified that they were rejected for improper identification.

Times Picayune
N.O. La.
Sep. 15, 1965

BOGALUSA PAIR KEEPING WATCH

Spiers, Knight Observe Rights Activities

By JOHN FARRY
(T-P Florida Parishes Bureau)

BOGALUSA, La.—Public Safety Commissioner Arnold Spiers and Chief of Police Claxton Knight were on hand throughout the day Saturday as civil rights demonstrators picketed business sections, entered and were served in two restaurants and staged a march on city hall.

Spiers, who with Knight was convicted by a federal judge in New Orleans Thursday on grounds they failed to carry out a court order on protecting demonstrators, Saturday revealed a move to strengthen police supervision.

He said an "elaborate training session" would be established beginning Monday designed to build the quality of Bogalusa policemen to a point "comparable to West Point."

A list of instructions to city officers, signed by Knight and apparently posted Saturday, also informed local lawmen of stringent policies. Included in the list of on the use of radios and phones, [illegible] of [illegible] business calls and the keeping of records, was the instruction to "enforce the laws equally and impartially at all times with every citizen regardless of race, creed or color."

Spiers also confirmed a report by The Times-Picayune that two Negros who had applied for jobs with the city police department had passed their civil service exams.

The two, Louis Brown Jr., 25, and Arthur White, 24, had taken their exams on July 23.

If hired, they would become the first of their race with a position on the all-white, 36-man force.

A march proceeded without incident from the Negro union hall to city hall Saturday afternoon. Upon reaching their destination, marchers were addressed briefly by Bogalusa Voters League president A. Z. Young. Young introduced "the Rev. Ronnie Moore," district Congress of Racial Equality director, who was in the dress of a clergyman, to lead in group prayers.

During the day, stores in the main business district on Columbia rd. and at the Pine Tree Plaza shopping center were picketed.

Two groups of civil rights participants were served at the Lapiaza restuarant and the Acme Cafe.

A federal judge in New Orleans, who convicted Spiers and Knight of civil contempt Thursday on grounds they failed to carry out his order to protect civil rights demonstrators, Friday gave them one week to make changes which would protect demonstrators or face jail and $100 a day fines.

Asked about his personal feelings about the sanctions, he said:

"At the moment I don't realize fully how extensively compliance will affect our normal operations. However, we do intend to carry out the court's orders, regardless of the burdens it will impose upon our small department.

"We will continue to work side by side with State Police and the Washington Parish sheriff's department in enforcing the law."

THE TIMES-PICAYUNE, NEW ORLEANS, LA., SUNDAY MORNING, AUGUST 4, 1963 SECTION ONE—PAGE EIGHTEEN

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JUDGE REFUSES REQUEST OF U.S.

Won't Grant Injunctions in Bogalusa Case

Federal District Judge E. Gordon West refused Wednesday to issue preliminary injunctions against owners and operators of five Bogalusa restaurants which U.S. Justice Department attorneys claim have discriminated against Negroes.

Judge West refused the injunctions after a full day's hearing. Defendants who own or operate four of the establishments claimed that they did not followed a policy of discrimination since enactment of the Civil Rights Act of 1964. They claimed that they have served and will in the future serve Negroes.

Attorneys for the civil rights division of the Justice Department sought to show a "pattern and practice" of discrimination on the part of the defendants.

The court refused to dismiss the suit and scheduled a hearing on its merits and on the request for a permanent injunction for Sept. 13 in New Orleans. Judge West is the presiding judge of the Eastern District of Louisiana. Wednesday's hearing was conducted in New Orleans.

TEMPORARY INJUNCTION

Granting the case for a full hearing, the judge approved the suit in view of the testimony given by the witnesses. He granted a temporary injunction until the permanent injunction will be heard. The temporary injunction will be that he will be in order on the ground that he would not follow a policy of discrimination.

He said that he believed the decision of refusal to serve Negroes adopted by the government attorneys resulted from civil rights public accommodations laws in January and February. He said there was evidence that there have been no refusals since that time.

The judge commented that he believed that the "so-called tests were carried up and carried on."

He said that the Justice Department had "carefully failed to show a pattern and practice" and he did not consider the

ON RACIAL CRISIS

Commenting on the Bogalusa racial crisis, Judge West said that he believes that the crisis will continue "as long as the extremists continue and parents and city fathers and publicity is extended."

He pointed out that defendants testified under oath that they will abide by the law and he said that he thought that they have been complying to some degree.

The judge said that at the trial of the case on the merits if there is no other evidence than was brought out Wednesday he will not grant the permanent injunction, but if there is other evidence he will grant it.

The government's suit was directed against George R. Graham, Jerome V. Graham and John Graham, owners and operators of Graham's Restaurant and the Acme Cafe; Mr. and Mrs. Millard Brooks, owners and operators of the Dairy Queen; Robert M. Rocha, owner, and Otto Cook, manager of LaPlaza Restaurant, and Mrs. Marian Strain Bennett, owner and operator of the Redwood Cafe.

3 NEGRO WITNESSES

Louis Kunder, trial attorney for the Justice Department, placed three Negroes on the witness stand who testified that they were denied service.

Alcie Taylor Jr., claimed that he went to Graham's Restaurant sometime in February and was told that he could not be served because the manager did not want to bring on any trouble."

His father testified that about Feb. 20 he went to LaPlaza and was refused. Robert Hicks, who identified himself as an officer of the Bogalusa Veterans League, said that he also went to LaPlaza about three weeks ago with two others and was refused entry.

Mrs. Bennett said that on one occasion she told a group of Negroes who entered the Redwood Cafe main dining room that she could serve them but could not guarantee their protection and they left. She said that she has served Negroes since and will continue to do so.

Cook testified that when two Negroes entered LaPlaza on one occasion wearing T shirts he refused to serve them because it is a policy of the restaurant that patrons must be properly attired. He said that subsequently Negroes who have come to the restaurant in proper dress and who conducted themselves properly have been served.

GIVES REASON

The owner of LaPlaza testified that he instructed Cook not to admit a group of Negroes who attempted to enter the restaurant three weeks ago because they were accompanied by a number of photographers and reporters. "I prefer to serve them as anyone else, without a delegation. I just wish they would come some time when they are hungry and want to eat."

The Grahams testified that they have never since enactment of the Civil Rights Act practised a policy of discrimination.

Roy Lilly, attorney for the Dairy Queen owners, did not present evidence, resting on a contention that the establishment was not covered by the act. Judge West ruled that the act did cover the Dairy Queen and refused a motion that the owners be granted a severance.

The other defendants were represented by Henry Richardson and John Gallespy.

COURT ORDER BINDS BOGALUSA OFFICERS

Requires Specific Plan of Law Enforcement

Bogalusa's two chief law officers, who were found guilty of contempt of federal court, were ordered Friday by District Judge Herbert W. Christenberry to set up a specific plan of law enforcement which will insure protection of civil rights workers.

The judge adopted, with a few changes, sanctions proposed by the United States Department of Justice against Arnold Spiers, Bogalusa's commissioner of public safety, and Police Chief Claxton Knight.

They were found guilty Thursday of civil contempt of an injunction issued by Judge Christenberry July 10 which ordered that they take all reasonable means to protect the civil rights demonstrators.

The order signed by the judge Friday provides that if Spiers and Knight do not show that they are complying with the specific orders within seven days they will be committed to the custody of the Attorney General and will pay a fine of $100 each day until they do comply.

DOAR PROPOSAL

John Doar, head of the Department of Justice's civil rights division, submitted the proposed sanctions against the two officials in open court Friday morning.

Proposals for much more severe penalties were submitted by a group of attorneys representing the Congress of Racial Equality.

The court also ordered that Donald Penton, a patrolman on the Bogalusa police force who was also found in civil contempt, be committed to the custody of the Attorney General and pay a fine of $25 a day unless he complies with the July 10 injunction and within five days after the police officials file their plan show the court that he has informed himself of the details of the plan.

Cont. in Sec. 1, Page 3, Col. 5

Judge Christenberry ordered that Spiers and Knight show that they are complying with the July 10 injunction by doing the following:

1. Develop and adopt in writing and publish a plan for police coverage including coverage of all picketing and demonstrations so as to carry out the July 10 injunction, particularly that part which directed the police to use all reasonable means to protect the demonstrators and pickets from assaults, beatings, harassment and intimidation.

This would include establishment of a chain of command and assignment of responsibility to personnel, establishment of an adequate communication system, establishment of liaison with civil rights groups and procedure for prompt assistance when needed from the Washington Parish sheriff's office and the Louisiana state police.

2. Development of a set of specific instructions as to the duties of individual police officers and supervisors in executing the plan for police coverage.

3. Notification in writing by all police officers of their duty to comply with the July 10 injunction.

4. Hold instruction and training classes for police officers so that the plan for police coverage is fully explained to each officer and each supervisor.

5. Obtain written assurance of each policeman that he understands and will comply with the plan of coverage, including picketing and demonstrations.

6. Adopt in writing a plan for disciplinary action against any officer who refuses to sign the assurance, including, if necessary, discharge of such officer.

7. Develop a written plan for personal inspection by Spiers and Knight to insure that officers are doing their duty in accordance with the plan of coverage.

8. Develop a written plan to discipline officers who fail to know and perform their assignments under the plan of coverage.

The order states that in development of the plan the Department of Justice shall be available for consultation with Spiers and Knight and John R. Martzell, their attorney.

REPORTS ORDERED

It was also ordered that Spiers and Knight file with the court a report on the first of each month for one year showing that the plan of coverage, the inspection and disciplinary procedures have been in effect.

If they fail to make a satisfactory showing to the court as to the execution of the plan they shall be committed to the custody of the Attorney General and pay a fine of $100 a day for each day of non-compliance, the order said.

The two officers were also ordered to preserve all their records pertaining to performance of the police force in compliance with Friday's order as well as the July 10 order and make them available to the representatives of the Attorney General for copying.

In presenting the plan, Doar told the court that the plan was designed to assure compliance with the July 10 order and is a remedial measure rather than punitive.

Judge Christenberry turned down requests by the CORE attorneys that the police reports to the court be on a weekly basis and that the officers be made to pay damages for alleged physical injuries suffered by pickets who were assaulted during demonstrations July 16 and 17 at Bogalusa's LaPlaza Shopping Center.

CORE representatives also asked that the court order dismissal of charges filed in Bogalusa city court against civil rights demonstrators who were arrested July 16 at the center. Judge Christenberry denied this request; but later Robert Rester, Bogalusa city attorney, said that he is dismissing the charges. Trial in the cases was set for Monday.

'Worker' Arrested by Bogalusa Police

(T-P Florida Parishes Bureau)

BOGALUSA, La. — An automobile accident led to the arrest of a white civil rights worker here Friday, charged with having an expired driver's license.

Police identified the worker as Francis Harrington, 22, of New York City. The accident occured as a group of three Negroes and one white entered and were served at the Roundtable Restaurant and the Acme Cafe, on Columbia st.

Pickets formed, meanwhile, in front of downtown shops and the Pine Tree Shopping Center.

No demonstration march was held, though a permit had been applied for the day before.

Leaflets distributed here invited "segregationists and all Klansmen" to a Saturday night Ku Klux Klan rally at Cross Roads, Miss., just across the Pearl River from this Southeast Louisiana papermill town. KKK rallies have been held in a cow pasture near Cross Roads earlier this month.

Times Picayune 7-31-65

NEW ORLEANS
STATES-ITEM
JULY 30, 1965

Judge Hears Suit to Mix 4 Bogalusa Cafes

Federal District Judge E. Gordon West today began hearing a case in which the United States Department of Justice seeks to desegregate four Bogalusa restaurants.

The restaurants involved include Graham's Cafe, owned and operated by George R. Graham, Jerome V. Graham and John Graham; The Dairy Queen, owned and operated by Mr. and Mrs. Millard Brooks; The La Plaza Restaurant, owned by Robert M. Rocha and operated by Otto Cook, and the Redwood Club, owned and managed by Mrs. Marian Strain Bennett.

The Justice Department is seeking a preliminary injunction to restrain an alleged pattern and practice on the part of the operators and owners of the eating establishments of refusing to serve Negroes.

MEANWHILE, DEFENDANTS charged with violating an injunction issued July 19 by Federal District Judge Christenberry were ordered to appear at 10 a. m. tomorrow when recessed hearings will resume.

Judge Christenberry yesterday dismissed civil contempt charges against Bernard Williams, a patrolman on the Bogalusa police force, after the officer took the stand and testified in his own behalf.

CAROLYN BRYANT, 27-year-old Bogalusa Negro, had testified earlier that Williams ordered a group of civil rights workers in Bogalusa city jail to stop laughing, saying "we can't get enough time to spend with our families for fooling with you niggers."

Williams said that while taking pictures of the pickets he noticed that every time he called one into the room for photographing one of the others would be grinning.

The patrolman denied that he used abusive language to the woman, but said he later realized he should not have said anything.

JUDGE Christenberry later dismissed the civil charges against Williams but left criminal proceedings pending.

Other defendants in the hearing are Arnold Spiers, Bogalusa commissioner of public safety; Police Chief Claxton Enright; Walter Vertrees Adams, a Washington Parish sheriff's deputy, and police officers Haymes Wascom and John Riley.

First witness called by CORE after the government rested its case was Jacqueline Butler of St. Louis, Mo., who has been working for CORE in Bogalusa for several months.

SHE SAID that she was arrested at the LaPlaza Shopping Center with other pickets on July 15 and when taken to the police station was mistreated by Deputy Adams.

She claimed Adams grabbed her by the collar and twisted it so that she choked, then threw her up against a wall in the jail. She said her head hit the wall and she later became dizzy and blacked out from the blow.

Two other CORE workers testified they saw Adams rough up Miss Butler.

The hearing was halted briefly yesterday after a morning recess so that Judge Christenberry could personally investigate an alteration between Sam Barnes, a Negro who is under charges of carrying a concealed weapon in Bogalusa, and two brothers, Donald Penton and Denver Penton.

THE SCUFFLE took place on the ground floor of the Wildlife and Fisheries Building where the federal courts are located.

After questioning the principals and witnesses to the disturbance, Judge Christenberry dismissed charges after warning the men against further incidents.

The Times-Picayune
Serving America's International Gateway Since 1837
NEW ORLEANS, SUNDAY MORNING, AUGUST 1, 1965

JUDGE TO ORDER MOVIE MIXING

Injunction in Bogalusa Case to Be Signed

Federal District Judge Herbert W. Christenberry Saturday said he will grant a permanent injunction that the U.S. Justice Department is seeking against a Bogalusa theater owner.

The suit is against Mayer Levenson, owner of the Ritz and State theaters. Justice Department lawyers seek to restrain Levenson from refusing to admit Negroes to the movie theaters on the same basis as whites.

Judge Christenberry said he will sign the injunction as soon as he draws it up. It will be effective immediately with Judge Christenberry's signature, said Judge Christenberry.

Five witnesses were heard in the suit, including three New Orleans motion picture distributors. Kessler sought to prove that the movie films shown in Levenson's theaters were in interstate commerce.

The two other witnesses were from Bogalusa. They were Doris Dell Lewis, a Negro girl who testified that she was in a group that was twice denied admission to the lower part of the State Theater June 4, and Frank Montalbano, who described himself as a business associate of Levenson and who said he was in the box office when Negroes sought admission tickets to the lower part of the State Theater.

New Orleans witnesses were Philip Silman, who said he represented 22 motion picture producers; Charles Robert Ost, sales manager for Universal Pictures; and Gene Goodman, branch manager for United Artists.

Defense attorney was Saul Stone.

JULY 28, 1965

NEW ORLEANS STATES-ITEM

$100,000 OK'd For Troopers At Bogalusa

BATON ROUGE (AP) — Public Safety Director Thomas Burbank gained approval of $100,000 in state funds today to help cover extra police expense at racially troubled Bogalusa.

In all, the Board of Liquidation of State Debt approved $817,700 in allocations for various emergency spending requests by public and state officials.

All allocations are subject to a mail poll of the Legislature. The board acts for the Legislature between sessions on emergency fiscal matters.

BURBANK, who has often been in Bogalusa personally helping direct state trooper efforts there to prevent violence, said he didn't know how long his men would have to remain there.

"But we will withdraw as tension decreases," he commented.

Burbank has about 160 troopers assigned there now, and at one time had three times that many in Bogalusa.

THE LIQUIDATION Board consists of top state and legislative officials. Presiding was Sidney Fazio, who sits for represented Carlos Spaht, the governor's executive counsel on leave. State law is not a board member, Fazio did not vote on the items.

The board, apparently in a marathon overnight session, finished the spending items in closed session, then started to break out for lunch. But members of the press reminded the officials state law requires any binding or legal action to open session, so the group came back and voted on each of the items in an open meeting.

Other items approved:

—The request of Baton Rouge legislators for $10,000 to continue a study of auto center operation in this area.

—Lallie Kemp Charity Hospital's request for $35,000 for subsurface drainage.

—A total $25,000 for a revolving fund for the Louisiana Surplus Property Agency.

—A state bond and tax board request for $1,200 to boost pay of the board's secretary.

—Orleans Parish jury commissioners, $3,000 for extra expenses.

—Rep. Cleveland J. Marcel's request for $100,000 to help finance a 2.5-mile canal improvement in Terrebonne Parish, enabling the Avondale Corp. to expand its production of offshore drilling rigs and boost employment.

—A request by the State Parks and Recreation Commission for $2,500 to pay cost of replacing sewage pumps in Fontainebleau State Park.

—A $20,000 request by Mrs. Earl K. Long, member of the Louisiana Tax Commission, for printing a new instructional guide for parish tax assessors.

—A request for $50,000 for the Department of Public Works to dredge Bayou Pinchemines.

THE TIMES-PICAYUNE, NEW ORLEANS, LA., WEDNESDAY MORNING, JULY 28, 1965

BURBANK SEEKS EXTRA $100,000

State Police Expense High in Bogalusa

BATON ROUGE, La. (AP)—Public Safety Director Thomas Burbank said he will ask the Board of Liquidation of State Debt Wednesday for $100,000 to help cover extra State Police expenses involved in assignments at race-troubled Bogalusa.

At one time, Burbank had as many as 340 state troopers on duty in the Southeast Louisiana community. He has trimmed his force there to 160 men.

While $100,000 will not cover all his extra expenses because of Bogalusa, Burbank said, the liquidation board, headed by the governor, is limited to $100,000 in a single application.

The board, with $1 million each year to allocate, acts on emergency spending requests between sessions of the Legislature. Its allocations are subject to a mail poll of senators and representatives.

As of now, he said his department has spent $97,000 for Bogalusa operations, but this still does not wrap in transportation costs of troopers to the town or new teletype equipment installed in emergency headquarters there.

"I don't know how much longer I will have to keep those men at Bogalusa," Burbank said. The expense adds up for each trooper each day they are on detached duty there.

Burbank said it was evident he would have to apply again in the future for additional funds.

The board also will consider these applications:

—Terrebonne Parish School Board, $2,150 to be used for surveys, maps, etc., in use of a 1841 section of land for a school site.

—Louisiana Youth Concerts Association, $50,000.

—Louisiana Mosquito Control Association, $80,000 to continue a fact-finding program.

—Lallie Kemp Charity Hospital, $35,000 for subsurface drainage.

—Orleans Parish coroner's office, $25,000 for expenses in connection with deaths at the New Orleans Charity Hospital involving patients from outside the parish.

—Orleans Parish jury commissioners, $3,000 for increased expenses.

—McNeese State College, Lake Charles, to buy a bus for transportation of Cameron Parish students to the college.

—Canal dredging in Terrebonne Parish, $50,000.

—State Parks and Recreation Commission, $2,500 to pay cost of replacing sewage pumps at Fontainebleau State Park.

—The State Agriculture Department also is asking the board to verify bids and applications of $20,000 to Tall Pines Egg Co., Baton Rouge, $22,500 to Gorham's Feed Mill, Keithville, and $17,500 to Bernard Packing Co., Manaura.

LOUISIANA WEEKLY 7-31-65

TESTING BOGALUSA CAFES -- Members of the Congress of Racial Equality last week under heavy local and state police protection tested the public accommodations law in Bogalusa, La. by seeking service in a number of previously all-white restaurants. They were accorded service in most of the establishments. The group is shown after testing the Acme Cafe. -- (UPI Telephoto)

LOUISIANA WEEKLY 7/31/65

UVL Urges Vote Bill Speed-Up

The United Voters League, Ellis F. Hull, president, this week urged Congressman Hale Boggs and U. S. Senator Russell B. Long to use their influence to speed up committee actions on the President's Voter Registration bill.

In his letters, the UVL president, said in part:

"Thousands of our citizens are concerned with what appears to be a delayed action in getting the Voter Registration Bill to the President's desk for his signature.

"We respectfully urge you to use the influence of your office to speed up the committees' action on the bill...

"As you know, this bill has passed the Congress some time ago. We are all watching and awaiting the action of the committee in getting this very important piece of legislation to the President's desk..."

LOUISIANA SCHOOL DESEGREGATION CASES, 1968

Box 445
Folder 16

Please Retain Original Order

CASE DOCKET

SEPTEMBER 27, 1965

COLLINS, DOUGLAS & ELIE
2211 Dryades Street
New Orleans, Louisiana

LAWYERS CONSTITUTIONAL DEFENSE
COMMITTEE OF ACLU, INC.
NEW ORLEANS OFFICE
HARRIS DAVID, Staff Counsel

1. Banks v. Claiborne Parish School Board

Suit filed in Federal District Court for the Western District of Louisiana on August 10, to desegregate the Claiborne Parish School System. The District court refused to grant the preliminary injunction sought in view of the fact that school started in early September. An appeal was taken, a motion for injunctive relief pending the appeal was filed with the U. S. Fifth Circuit Court of Appeals. On August 26 the Fifth Circuit ordered the District Court to direct integration in accordance with the recent Price and Singleton Decisions which call for integration at the rate of four grades per year. The District Court entered a decree ordering the submission of a desegregation plan by September 27 and to be effective January 1, 1966.

2. Johnson v. Jackson Parish School Board

Suit filed in the U. S. District Court for the Western District of Louisiana in early summer to desegregate the Jackson Parish School System and to enjoin the sale of school bonds earmarked for discriminatory use. On July 22 the District Court ordered the defendants to submit a desegregation plan within 30 days. On August 27, in an ex parte order the District Court extended this time by 20 days - two weeks beyond the opening of the fall semester. Defendants were given 55 days to submit a plan for which there was ample precedent. On September 17 a plan was submitted calling for desegregation at a rate of four grades per year. On September 20 we filed amendments to strengthen this plan.

3. Hicks v. Knight

Suit filed June 25, In the U. S. District Court for the Eastern District of Louisiana to enjoin the Bogalusa State Police, the Washington Parish Sheriff's department, Bogalusa City Mayor Jesse Cutrer, and certain law enforcement officers, from beating, cursing, and failing to protect Bogalusa Negroes from physical and verbal abuse at the hands of white mobs during civil rights demonstrations. Negroes had been beaten, bitten by police dogs, and chased by police and whites out of Cassidy Park while attempting to integrate that park pursuant to Mayor Cutrer's order. Hooded men in the police station exemplified the intimidation this suit sought to enjoin.

Defendants were ordered to show cause on June 28 and a lengthy hearing ensued. On July 10, Judge Herbert Christenberry issued a preliminary injunction enjoining Police Chief Claxton Knight and Police Commissioner Arnold Spiers from committing or threatening acts of violence, failing to protect etc.

Several days prior to the issuance of the injunction the plaintiffs were ordered to show cause why all demonstrations and marches should not be enjoined due to the tense atmosphere in Bogalusa. The suit was dismissed on jurisdictional grounds.

On July 16 members of the Bogalusa Voters League and of the Congress of Racial Equality were assaulted while picketing in plain view of the police. On another a barber shop owner hosed picketers in front of his shop. On July 21, defendants were ordered to show cause why they should not be held in civil contempt for violating the Courts injunction, and seeking to enlarge the injunction to include the state police. The Justice Department intervened and filed a criminal contempt action against Knight, Spiers, and Adams. On July 30 the Knight, Spiers, and Officer Penton of the Bogalusa Police force were adjudged in civil contempt of court. They were ordered, inter alia, to submit monthly reports on their handling of civil rights activities for a year. The first report has been submitted. No incidents involving police brutality have been reported since the issuance of the contempt order.

4. Louisiana v. Sam Barnes

Barnes, a 63 year old Negro citizen of Bogalusa, was charged with carrying a concealed weapon and assualting Deputy Sheriff Vertnees Adams after Adams and a Louisiana State Trooper stuck a billy club through his legs and jostled him around on it, during the Cassidy Park incident in Bogalusa, a motion to Quash and a Motion for a Bill of Particulars have been filed. A suit was filed to enjoin the prosecution based on the July 10 Bogalusa Injunction, but it was dismissed. A removal petition has been prepared and it to be filed just prior to trial. The October term begins on October 22, but the exact trial date has not been set.

5. Louisiana v. Henry Austin

On July 8, during a civil rights march in Bogalusa a Negro girl was struck in the head and sought refuge in Austin's car. A fight broke out at the car and Austin shot the prime assailant as a mob closed in. Austin was charged with aggravated battery. Motions to Quash and For Bill of Particulars, and a Removal Petition have been prepared. The trial date has not been set.

6. City of Bogalusa v. Henry Austin

Austin was charged with discharging firearms within the city limits, the charge arising out of the shooting incident, Motions to Quash and For a Bill of Particulars were filed on August 25. The case has been removed to federal court.

7. Louisiana v. Henry Austin

On July 10, Austin's was arrested in his parked car. Police searched his car and found a half pint of vodka in his car and charged him with drunken driving. Questioning at the police station centered on his civil rights activities. Bond set at $300.00. Motions to Quash and for a Bill of Particulars were filed. A hearing on these motions and a trial is set for September 27.

8. City of Bogalusa v. Maxine Britt

On June 22 Maxine Britt was picketing in Bogalusa. A police officer asked her "Girl you want to give me your name or you want to go to jail". She refused to give her name. Twenty minutes later an officer appeared with a warrant for her arrest and arrested her. Charged with disturbing the peace. Bond - $300.00. Trial set for ~~September~~ October 18.

9. City of Bogalusa v. Ricky Edwards

Arrested and charged with disturbing the peace while picketing. Trial set for October 18.

10. City of Bogalusa v. Marvin Austin

Austin, a member of the Bogalusa Voters League active in civil

rights activity was arrested while picketing and charged with vagrancy despite the fact that he had $50.00 in his possession at the time of the arrest, Affidavit No. 65-1340, trial date has not been set.

11. City of Bogalusa v. Elmore Barner

Barner, a member of the Bogalusa Voters League was arrested while picketing and charged with vagrancy and loitering despite the fact thatshe had $12.00 in her possession at the time of the arrest, Affidavit No. 65-1341, a trial date has not been set.

12. Louisiana v. Fletcher Anderson

An active member of the Bogalusa Voters League was charged with carrying a concealed weapon, (2) Driving with out proper registration, and driving with an improper muffler. Motions to Quash and an Application for a Bill of Particulars have been filed. Hearing in the concealed weapons charge on these motions set for September 27.

13. Louisiana v. Alcie Taylor, Jr.

An active member of the Bogalusa Voters League is charged with carrying a concealed weapon on or about his person. Motions to Quash and a Bill of Particulars have been filed. A hearing is set on these motions on September 27.

14. Louisiana v. James Robinson

A member of the Bogalusa Voters League is with carrying a concealed weapon. Motions to Quash and for Bill of Particulars filed. Hearing set for these motions on September 27.

15. Louisiana v. A. Z. Young

Young, the Presidant of the Bogalusa Voters League is charged with cashing a bad check with intent to defraud. Motions to Quash and for Bill of Particular filed. Hearing set on these motions for September 27.

16. Louisiana v. William Morris Parker

A member of the Bogalusa Voters League is charged with driving with improper lights and carrying a concealed weapon. Motions to Quash and for Bill of Particulars filed. In the concealed weapons charge hearing set on these motions for September 27.

17. Louisiana v. Ronnie Moore

Moore, a CORE field secretary is charged with reckless driving. Motions to Quash and for Bill of Particulars have been filed. Hearing set on these motions for September 27.

18. Louisiana v. James Robinson

Robinson, a Negro citizen of Bogalusa was charged with assault with pistol on two counts. Motions to Quash filed and denied. Motion for Bill of particulars filed and denied. Tried and convicted in the Bogalusa City Court. Sentencing set for October 18.

19. Carter v. West Feliciana Parish School Board

Suit filed in the U. S. District Court for the Eastern District of Louisiana by Murphy Bell on July 22. Judge E. Gordon West ordered desegregation at a rate of 2, 2, 4, 4, grades per year.

An appeal was taken and a motion for injunctive relief pending the appeal was filed. On August 18, the U. S. Fifth Circuit Court of Appeals reversed and directed the District Court to order desegregation in conformity with the Price and Singleton decisions which means 4 grades per year. Since Judge West was on vacation the District Court failed to act. On August 31 a motion for revised entry of order was filed and Judge Ellis ordered the rate of desegregation increased to 2, 5, 5 grades per year.

Complaints received reveal that the School Board is discriminating in its school bus operation thereby making integration impracticable in some cases. On September 20 a letter seeking voluntary elimination of this problem was sent. A reply is expected on September 27.

20. Louisiana v. Jackson and Williams

Two Negro citiznes, who were among the first of their race to register to vote in West Feliciana Parish have been prosecuted for allegedly false statements made on their registration application. The case was remoed to federal court on May 6 and remanded on May 7. The remand was appealed, but on May 20 the Fifth Circuit Court of Appeals denied a stay of the prosecution pending the appeal. On May 21 a second removal petition was filed and was remanded by Judge West on his own motion. A second appeal was taken and a stay of the prosecution pending the appeal was granted by the U. S. Fifth Circuit Court of Appeals on June 24. A brief in support of the appeal has been prepared and is due on October 15.

21. Rasheed and Thomas v. Louisiana

Two Negroes were convicted of willful and knowing possession of narcotics and sentenced to 15 years in prison. On appeal we argued illegal search and seizure, no probable cause for any arrest, violations of procedural due process, and of the right to counsel. The conviction was affirmed by the Louisiana Supreme Court. An application for rehearing has been filed.

22. Louisiana v. Dawson, Martin, and Johnson

Three Negro citizens of Tallulah, Louisiana all active in voter registration activities have been charged with swearing falsely on theirvoter registration forms that they had not committed felonies. Other registered Negroes and whites who have committed the same past alleged felonies are not being prosecuted. Arraigned on September 23. Special pleadings due by September 29. Trial set for October 13. Removal petitions being prepared.

23. Cox v. Louisiana

The Reverand B. Elton Cox was arrested while leading a demonstration near the state courthouse in Baton Rouge in 1961. He was convicted of obstructing justice. In January, 1965, his conviction was reversed by the United States Supreme Court and the permission doctrine was enunciated.

Louisiana then indicted Cox for attempted obstruction of justice, the case was removed to federal court on May 6. It was remanded to state court on June 1. The remand was appealed to the U. S. Fifth Circuit Court of Appeals. On June 1. A motion to stay the prosecution pending appeal was filed on June 8 and the Fifth Circuit granted the stay. Brief in support of the appeal is due on October 25.

A motion for summary reversed was filed in the U. S. Fifth Circuit Court of Appeals on the theory that the stay granted by the Fifth Circuit disposed of issues of fact at trial and therefore there was nothing further to litigate. The motion was denied.

24. East Jackson State Mental Hospital

A letter was sent to the Justice Department complaining of segregated facilities and general inhumane conditions at the hospital. The matter was investigated by the F.B.I. and is being investigated.

25. Castle v. Huey P. Long Charity Hospital

Suit filed on July 22, 1964 in Federal District Court to desegregated hospital facilities at Charity Hospital. All facilities from wards to blood banks were segregated. A request for admissions was filed in January, 1965 and a motion to inspect was prepared. At a pre-trial conference in April, 1965 hospital authorities agreed to integrate and the court retained jurisdiction.

Substantial integration has occurred. Discrimination in admitting procedures still exists. A letter was sent to the Department of Health, Education and Welfare and they are currently investigating the matter.

26. Brown, et al vs. Louisiana

Henry Brown, a Negro citizen of Clinton, Louisiana was the first Negro ever seen in the Clinton Public Library. He was asked to leave the library but refused and was arrested. Motions to Quash and for a Bill of Particulars were filed and denied. Brown was tried and convicted of disturbing the peace. On April 9, 1964. A motion for a new trial was filed and denied. Writs of mandamus, certiorari and prohibition, were sought on July 28, 1964, and denied on October 26, 1964. On October 28, 1964 an application for a stay of execution of sentence was filed in the Supreme Court of Louisiana, but was refused. Petitioners were arrested on November 2, 1964. On November 2, 1964 motions were filed in the District Court reurging a stay and seeking alternatively writs of habeas corpus and mandamus. At that point the stay filed on October 28 was granted. On January 4, 1965 a petition for certiorari was filed in the United States Supreme Court. Certiorari was granted on May 3, 1965. The date of argument has not been set.

27. Davis et al vs. Gallinghouse

Since the passage of the 1965 Voting Rights Act, Negroes have had to wait in day long lines to be registered many have had to return several times and many have been refused for lack of proof of identity and place of residence.

Suit filed in federal district court on August 31 against the Registrar of Voters in Orleans Parish seeking temporary restraining order, preliminary and permanent injunctions enjoining the registrar's office from requiring proof of residence and identity and from slowing down the registration process. Gallinghouse had instituted these requirements upon taking office in 1961.

Discovery revealed that approximately 30% of all registered Negroes had registered under States Rights Party or no party at all. They were thus effectively disenfranchised since they cannot vote in the democratice primary. Judge Ellis has the matter under advisement.

28. Bogalusa Voters League Negotiations

A series of negotiations have been carried out between Mayor Cutrer and the Bogalusa Voters League represented by Attorney Elie. The negotiations have ranged over a variety of subjects as sewerage, housing, integration of parks, repeal of segregation ordinances etc. Two Negroeshave passed police tests, are in line for appointment to the Bogalusa City Police Force.

29. Crown-Zellerbach

The Crown-Zellerbach paper mills is the major industry in Bogalusa. Widespread discrimination exists in their plants eg. segregated local, unequal availability of jobs, unequal senority rights, and lines of progression. A complaint was filed with the Equal Employment Opportunity Bureau under Title VII of the Civil Rights Act. L.C.D.C. attorneys advised union officials during recent contract negotiations where such advice was requested. The contract signed August 2, 1965 achieved some improvements, but significant discrimination still exists. A List of ~~xxxxx~~ employees having recall rights should be obtained by union head Otha Peters.

30. City of Bogalusa v. John Singleton

Singleton was assaulted while picketing. He struck back and was charged with simple battery. He was tried and convicted, and sentencing has been set for October 18.

31. City of Bogalusa v. Charles E. Brown

Charged with simple battery, affidavit No. 65-1239. A trial date has not been set.

32. Andrews et al v. City of Monroe

Action was brough to desegregate the Monroe City School System and to enjoin the sales of school bonds earmarded for discriminatory purposes as construction of segregated building etc. A request for admissions was filed. District denied the prayer for a preliminary injunction, and an appeal was lodged with the Fifth Circuit Court of Appeals. A Motion for injunctive relief pending appeal was filed on August 26 the Fifth Circuit ordered consideration of the matter in light of Price and Singleton . A hearing was held in Monroe on September 17.

CLOSED CASES

1. James Potts vs. Governor John J. McKeithen, et al

In January, 1965 James Potts applied to Louisiana Polytechnic Institute. The school admitted that he was qualified, but refused his admission because of their policy of segregation. Suit was filed in federal district court in January, 1965 seeking Pott's admission. February, 1965, pursuant to Court order he became the first Negro student at Louisiana Polytechnic Institute.

2. James Potts vs. Governor John J. McKeithen, et al

In July, 1965, Potts was arrested while participating in a demonstration in Jonesboro, Louisiana. He was physically and verbally abused in the police stattion and referred to as an "educated Nigger". He was suspended from school pursuant to a state Board of Education regulation which provided for the automatic suspension of any student "arrested and incarcerated". This regulation was adopted in 1961 after the Southern University Demonstrations to curtail Negro students' participation in civil rights activities. Suit was filed in August seeking his reinstatement. Appeal papers and supporting briefs were prepared. On September 17, 1965 Judge West issued a preliminary injunction reinstating Potts and ruled that the regu-

lation was unconstitutional when applied to first amendment activities.

3. Jenkins v. City of Bogalusa School Board

Suit was filed in federal district court on July 19, 1965 to desegregate the Bogalusa School System. A request for admissions was filed. The Government intervened. On August 13, 1965, Judge Ellis ordered that the school system be integrated at the rate of 2 grades in 1965-66, and five grades per year in the two succeeding years.

4. Hicks v. Cutrer

On April 7, 1965, the city of Bogalusa enacted on breach of the peace ordinance to curtail civil rights demonstrations and picketing. Arrests were made under it and a suit was brought on June 3, 1965 to enjoin its enforcement. The City of Bogalusa repealed the offensive sections of the statute whereupon the suit was dismissed without prejudice.

5. On July 16, 1965 seven CORE workers and members of the Bogalusa Voters League were picketing at the La Plaza Shopping Center in Bogalusa. They were assaulted, arrested, and charged with disturbing the peace. The charges were dismissed.

6. Louisiana v. F. David Harrington

A CORE worker was arrested and charged with driving with an expired license. Charges were dismissed upon production of a telegram from the New York Bureau of Motor Vehicles stating that he presently had a valid license.

7. The following cases arose out of civil rights activities in Bogalusa this summer. All charges were dismissed.

a. Marvin C. Austin- Affidavit No. 65-1152
b. Michael L. Williams- Affidavit No. 65-1150
c. Walter Beck, Jr. - Affidavit No. 65-1148
d. Clifton Curry- Affidavit No. 65-1153
e. Ardell Magee- Affidavit No. 65-1213
f. Joby B. Greenlee-
g. Alcie Taylor, Jr.- Affidavit No. 65-1218
h. Gerald Penton- Affidavit No. 65-1192
i. Carleton Allen Short-Affidavit No. 65-1206
j. Lorraine Smith-Affidavit No. 65-1216
k. Jimmy Gerome Bruns- Affidavit No. 65-1205
l. Travis Peters- Affidavit No. 65-1220
m. Rogers Blackburn- Affidavit No. 65-1217
n. Gerald O. Simmons- Affidavit No. 65-1162
o. William Peters-Affidavit No. 65-1193
p. Charles Bellows- Affidavit No. 65-1480
Affidavit No. 65-1512
q. Craig Humphrey Morgan- Affidavit No. 65-1511
r. Marvin Cornelius Austin- Affidavit No. 65-1339
s. Elmer Barner- Affidavit No. 65-1342
t. Marvin Cornelius Austin- Affidavit No. 65-1507
u. Arthur Ray Applewhite- Affidavit No 65-1510
v. William Henry Park- Affidavits No. 65-1525, 1526 and 1527
w. Ralph Graves
x. James Brown

8. City of Bogalusa vs. Henry Robinson

Robinson, while picketing with the Bogalusa Voters League, saw his mother being arrested and ran to the scene. He was grabbed by a police officer from behind, arrested, and charged with engaging in a fight and disturbing the peace. The prosecution is not going forward with the case. Affidavit No. 65-1156.

9. City of Bogalusa vs. Oree Robinson

While picketing Mrs. Robinson was arrested and charged with disturbing the peace and resisting arrest. Case is inactive. Affidavit No. 65-1158.

10. Burris et al vs. Redwood Cafe

Action was brought to desegregate the Redwood Cafe in Bogalusa which had refused to serve Negroes. The Government intervened in the case. Judge West denied a preliminary injunction on July 28, 1965, and a permanent injunction on September 22. The Cafe is serving Negroes.

11. George et al v. Davis, President of the East Feliciana School Board

Action brought in federal district court by Murphy W. Bell seeking immediate desegregation of the East Feliciana Parish School System. On August 13, 1965, Judge Ellis ordered desegregation of grades 1 and 12 for the 1965-66 school year, and desegregation of 5 grades in each of the succeeding two years.

12. Cox v. Louisiana

The Reverend B. Elton Cox was arrested while leading a demonstration in Baton Rouge in 1961. He had been given permission to demonstrate, and was arrested as the crown was dispersing. He was charged with disturbing the peace, obstructing the sidewalk, obstructing justice, and criminal conspiracy. He was convicted on the first three charges, and those convictions were affirmed by the Louisiana Supreme Court. Hehhad been sentenced to one year and nine months in jail, and fined $5,700.00. Two appeals were taken to the U.S. Supreme Court, and the convictions were reversed in January, 1965.

13. Smith vs. St. Tammany Parish School Board

Action brought in federal court seeking desegregation of the public school system and enjoining the sale of school bonds earmarked for perpetuating the segregated system in that Parish. On May 19, 1965 the Court ordered desegregation at the rate of 2,2,4,4, grades per year.

Rec'd 9/30/65

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

September 28, 1965

Mr. Marvin Rich
C.O.R.E. Scholarship,
Education and Defense Fund, Inc.
150 Nassau Street, Room 1312
New York, New York

Dear Marvin:

Thank you for your check in the amount of $1,807.71 for fees and expenses for August.

This report will cover the period from September 1, through September 28.

Since our last statement, we have incurred the following expenses and performed the services itemized below:

Telephone, statement enclosed		$327.49
Court cost, statements (except 33.60 in Potts case, witness fee paid, receipt loss)	316.75	
*Credit	91.17	
		225.58
Travel expenses		30.00
Miscellaneous copies of petition in Davis v. Gallinghouse	?	108.15 included in 316.75
Total Expenses		$691.22
		- 108.15
		583.07

*You sent us a check for A. B. Letter Service, Inc., for Cox brief the total cost was $62.83 hence the credit.

COLLINS, DOUGLAS & ELIE
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523-5197

NARRATIVE OF SERVICE

September 1, Research for trial brief and Memo	
Davis v. Gallinghouse	
Collins and Douglas 5 hrs. each	$100.00
September 2, Research for trial brief and Memo	
Davis v. Gallinghouse - Voter registration case	
Collins and Elie 4 hrs. each	80.00
September 3, Research and preparation on Potts	
Collins 10 hrs. Elie 4 hrs.	140.00
September 8, Pretrial conference on	
Davis v. Gallinghouse	
Collins & Elie 6hrs. each	120.00
September 9, Trial, Davis v. Gallinghouse	
Collins 8 hrs.	80.00
September 13, Trial, Davis v. Gallinghouse	
Elie 4 hrs., Collins 8hrs.	120.00
September 14, Trial, Davis v. Gallinghouse	
Collins 8hrs.	80.00
September 15, Trial, Davis v. Gallinghouse	
Collins 7hrs.	70.00
September 16, Preparation for Potts hearing	
Collins and Elie 6 hrs. each	120.00
September 17, Potts trial	
Collins 14 hrs.	140.00

COLLINS, DOUGLAS & ELIE
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ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

September 27, trial of Henry Austin in Bogalusa	
Douglas 10 hrs.	100.00
Total hours 115 at $10.00 per hour	1,150.00
Less September retainer	400.00
Total fees in excess of retainer	750.00

RECAPITULATION

Telephone, travel, Court cost and Miscellaneous	691.22 — 108.15
less credit fees in excess of retainer	750 .00
October retainer	400.00
Total due	$1,841.22

108.15
$1,733.07

Thanks for your cooperation in this matter.

Personal regards,

COLLINS, DOUGLAS & ELIE

BY: L E Elie

LEE/vmg

enclosures

691.22
108.15
583.07
750
33.07 — left

September 30, 1965

Mr. Lolis E. Elie
Collins, Douglas & Elie
2211 Dryades Street
New Orleans, Louisiana 70113

Dear Lolis:

Just got your September 28 bill. Would you check it again please. As far as we can tell, you have charged us twice for the $108.15 for miscellaneous copies of the petition in Davis v. Gallinghouse. It appears as a separate item and is also included in the $316.75 total for court costs, etc. Since we also paid $790 for your time in this case, I just assume keep it down. Also, you are charging us for calls to the Legal Defense Fund. Why don't you call them collect. They are far richer than we are.

I was really very pleased by the Potts' case. As far as I am concerned, you guys are the greatest and are really setting New Orleans on its ear.

I notice that Nils went to Bogalusa to try Henry Austin. What was the result. I assume that he was convicted, but let me know.

When are you coming to New York. Would like to see you.

Cordially,

Marv

MR:hm

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

October 2, 1965

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

Mr. Marvin Rich
C.O.R.E. Scholarship, Education
and Defense Fund, Inc.
150 Nassau Street
Room 1312
New York, New York

Dear Marv:

I really don't know whether the $108.15 was included in the $316.75 or not; my problem stems from the fact that I sent the statements to you. I think the best solution is for you to add up the statements and send what your addition shows.

Carl suggested that he and I should get together in New York to discuss our overall program in Louisiana, so I may be seeing you in New York either later this month, or early next month.

As for the Inc. fund telephone calls, I will have to assume that those calls were made by L.C.D.C. lawyers, we are certainly aware of the Inc. fund wealth.

Personal regards,

Lolis

LOLIS

L/ew

October 8, 1965

Collins, Douglas & Elie
2211 Dryades Street
New Orleans, Louisiana 70113

Gentlemen:

Enclosed is a check in the amount of $1,733.07 covering expenses detailed in your letter of September 28 as follows:

Balance of fees for the month of September	$1,333.07
October retainer	400.00
Total	$1,733.07

Sincerely,

Hope Maynard

/hm
Enclosure

C D & E bill

1. N. Y. C. calls
total $31.20

2. As I see,
$108.15 (misc copies)
is included in the
$316.75.

3. Amount due —
$1,733.07

RECEIVED
OCT 22 1965
CORE SCDF

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

October 20, 1965

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

COPY

Carl Rachlin, Esq.
C.O.R.E.
38 Park Row
New York, New York

Dear Carl:

On Monday 18th October 1965 in Bogalusa two cases were continued until November 15. These were the cases of Maxine Britt and Michael Jones, two separate cases. Both has a $300.00 bond on one charge and Jones has a $500.00 bond on three charges. Both of these people are in California. I have attempted by all the means I know to get these people in Bogalusa for trial. The Judge has continuted the cases several times. It would cost less than $800.00 to get these people in Bogalusa by bus. Maxine I understand is working in California and Jones I am told is in school out there.

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
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2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

COPY

Richard Haley feels the bonding company may apprehend Jones in California and bring him to Bogalusa. Britt would at worse get off with a fine but Jones I am sure would be found guilty on at least one of the three charges. Jones would probably get some jail time. The only other way for Jones is to reimburse the bonding company for the forfeiture.

Respectfully,

COLLINS, DOUGLAS & ELIE

BY:_____

CC: Mr. Richard Haley
Dr. Wiley
Mr. Marvin Rich
Mr. Bob Hicks

NRD/vmg

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

RECEIVED
NOV 18 1965
CORE SEDN

November 16, 1965

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

COPY

Mr. Carl Rachlin
C.O.R.E.
38 Park Row
New York 38, New York

Dear Carl:

This letter is to inform you that the bonds in the Maxine Britt and Michael Jones cases were forfeited in Bogalusa yesterday. The Jones bond was $500.00; the Britt bond was $300.00.

Respectfully,

COLLINS, DOUGLAS & ELIE

BY:_____

NRD/ew

cc: Marvin Rich
Richard Haley

FELLAS:

WENT TO BOGALUSA ON YESTERDAY & MONDAY 8/16 & 8/17.
TRIED JOHN SINGLETON – LOST (DRUG STORE OWNER. HIT PICKET – PICKET HIT HIM KNOCKED THROUGH PLATE GLASS.
SAM BARNES – WON DIRECTED VERDICT OF ACQUITTAL
JAMES ROBINSON – LOST ASSAULT WITH A PISTOL ON 2 WHITE YOUTHS –
MAXINE BVITT WAS SUPPOSED TO BE TRIED BUT WAS OUT OF THE JURISDICTION.
WE HAVE UNTIL 8/30 TO BRING HER IN.

THE BARNES CHARGE GREW OUT OF THE INCIDENT WHEN HE AND BOB HICKS WERE PICKETING AND A NUMBER OF GUYS BEAT BARNES UP.

HENRY AUSTIN WAS CHARGED IN CITY COURT WITH DISCHARGING FIREARMS IN THE CITY LIMITS. FILED MOTION TO QUASH. DENIED. CASE SET FOR TRIAL 8/30. WILL REMOVE.

LAST WEEK WE GOT THE BOGALUSA SCHOOLS (CITY ONLY) INTEGRATED.

LAST WEEK WE ALSO DESEGREGATED EAST FELICIANA SCHOOLS
WE GOT 1st & 12th THIS YEAR. 1965 – 1966
5 GRADES IN 1966 – 1967
5 GRADES IN 1967 – 1968

5th CIRCUIT THREW BACK THE BOSSIER & RAPIDES DESEGREGATION PLANS. NOT ENUF DESEGREGATION.

We have a girl law clerk from U.C.L.A.

We are supposed to get a female atty in next week.

Dick Sobol the guy from Arnold Fortas & Porter was great.

Charles Bellows & Henry Parker (witnesses in Inj.)
↓ Guy with the limp, white
↓ Handle Bar mustache, Bulging eyes, white

These 2 guys chained themselves to the flagpole at the court. took 2½ hours to get them loose.
This, after they were kicked out of B.V.L. & C.O.R.E.
B.V.L. says leave them in jail. I feel a responsibility to them. Phone calls all over hell for them. Bond 300.– ea. on 2 charges Vagrancy & disturb. Peace. I go to bath to them and they want to engage in a Philosophical discussion.

Jules – we look forward to seeing you on Labor day.
– will ans. your letter separately.
George – Quit crying
Mike – I cancelled my subscription to New Republic
Jerry – Quit moving around
Warren – I believe its the Calif. Goldwaterites who are looting.
seriously I'm very concerned about that occurrence
Bill – Can't get a decent poker game since you left.
Peter – Don't forget to eat your cereal and your overshoes.

Thanx for everything
Nils, Bob & Lolis

Mail to Marvin Reid

(1.)

Dear Marvin

Hope you are feeling. You may be interested in the following trials which occurred in Bogalusa.

John Singleton - Negro - Picket
- Charged with disturbing Peace by fighting.
Judge H.J. [redacted] Jones. - City Charge.
- City atty is Robert Rester
- Complaining witness L.O. Lane. owner of Lanes Walgreens Drug Store.

The issue in this case was factual I believe the complaining witness and his witnesses lied. Lane claims Singleton brushed him with the sign as the picket passed and as he stood momentarily outside his store. Told him boy don't brush me with that sign. Picket turned, punched him, punched him again and knocked him into plate glass window breaking the plate glasses and his eye glasses. Picket then ran away. Singleton was tried on 8/16 & 8/17. found guilty 8/17. Sentencing deferred til 8/30. I hope he will get only a fine

#

Sam Barnes - Tried 8/17 charged on May 29th city court with disturbing the peace by fighting. Barnes was the central figure in the Cassidy Park incident. He also charged in state court with assault on a State police ~~boy~~ with a revolver. Barnes you will recall is the man Negro-very old who had a night stick thrust between his legs by 2 police and was jostled. He was beaten with a strap by 2 Negro prisoners in the Parish Jail at Franklinton. Barnes was acquitted in the City trial on a motion for directed verdict of acquittal.

Henry Austin on ~~Friday~~ Monday Aug 9th we found for the first time that Henry (He shot Alton Crowe during one of the demonstrations) Austin was charged in City Court with discharging a firearm within the City limits, a minor offense. We say the ordinance was not directed to situations where someone was in fact shot. We say the trial of the lesser offense at the least should be postponed until the trial of the greater. If we win on the greater then that should bar the lesser. At any rate we moved to quash the charges on 8/17. It was denied. The trial is set for 8/30 (The day on which the Bogalusa schools are to be integrated things should be poppin) We intend to remove to Federal Court.

Maxine Birth — she was out of the jurisdiction her case was postponed till 8/30

James Robinson — City Charge two counts of assault with a dangerous weapon. found guilty. 5 or 6 Negroes active in the C.R. movement was on April 22 at the home of Mrs. Mamie Tillman. There were also present a couple of white girls. 2 Negroes stopped 2 white youths who got lost and were found in the Negro district. Their car had a confederate flag on it. The Negroes had a pistol — and told the whites to get out of the car. One of them did. They were searched and permitted to leave. The city police were consulted and returned to the area and to the Tillman home where the Negroes were brought outside. There was no porch light, but there were trees, and a street light

nearly. It was about 10:30 or 11 P.M. the only lights were the police flashlights and possibly search lights attached to the police cars. Our witnesses testified that the whites identified several of the negroes as being the party in question and finally set on James Robinson. Robinson was found guilty on one counts. We have a fair chance of getting the other charge of assault dismissed (1 charge was lodged on to each of the white Boys)

I am disturbed about the Los Angeles Riots and would be happy to know what your analysis is.

I would like to have your views on Kings embarkment into foreign policy. I'm against it. It seems he is an ambassador without portfolio. I also don't believe he can stay on top of it –

Nils
3

Photo + Ellen 8/12/65

Bogalusa Ordered To Mix Two Grades

Desegregation of Bogalusa public schools was ordered today, to begin this fall and to be complete by 1967.

Federal District Judge Frank B. Ellis imposed the plan today after attorneys for the Bogalusa school board and the Justice Department and the Congress of Racial Equality had failed to reach an agreement.

Desegregation will begin with the fall term—which begins in only 15 days—with grades 1 and 12.

NEXT FALL, grades 2, 3, 8, 9, and 10 will be desegregated. In the 1967-68 school year, the remaining grades will be mixed.

Judge Ellis said this plan was similar to one he had ordered earlier for Tangipahoa Parish.

Judge Ellis said details of his plan do not conform to regulations of the federal Department of Health, Education and Welfare for receiving federal aid. He said he did not go this far because of racial tension in Bogalusa.

ORDINARILY, however, a school district under court order to integrate is eligible for federal funds regardless of HEW rules.

Attorneys for the Bogalusa schools complained that 15 days was not long enough to arrange desegregation, but Judge Ellis suggested that they advertise in Bogalusa newspapers to inform the parents of the 600 children involved this year. He also noted that there is still time for a letter to be sent out.

When an attorney for the plaintiffs questioned administrative details of the plan, Judge Ellis told him that if the Justice Department wanted to take over Bogalusa schools it could do so, but as far as he was concerned, full responsibility for acting in good faith lies with the local school board elected by the people.

THE JUDGE said he would

See BOGALUSA— Page 4

AUGUST 11, 1965

Bogalusa Meet With Negroes Set

(Special to the States-Item)

BOGALUSA—Representatives of the Bogalusa Voters League and city officials will meet again Aug. 21 in a followup to a four-hour-long session the two groups held yesterday.

Both sides said yesterday's conference had been congenial, but neither would discuss what was on the 14-point agenda drawn up by the voters league.

Participating in the conference were Negro attorneys Lolas Eli and Robert Collins, the BVL executive board, Mayor Jesse Cutrer, the commission council, City Attorney Robert Rester and Attorney John Martzell.

A rally was held at the Ebenezer Baptist Church last night, but there were no pickets or parades in the city.

Bogalusa--

(Continued from Page 1)

not become involved in administrative details unless the local board fails to comply.

There were indications in federal court that a decision in the school desegregation case involving East Feliciana Parish might be rendered late today or tomorrow.

LOUISIANA SCHOOL DISCRIMINATION CASES, 1966

Box 45
Folder 17

Please Retain Original Order

LDF
Western Union Telegram
Legal Defense Fund
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
10 Columbus Circle, New York, N.Y. 10019 • JUdson 6-8397

Edward W. Wadsworth, Clerk
U.S. Court of Appeals
for the FifthCircuit
400 Royal St., Room 408
New Orleans, La.

Dear Mr.Wadsworth:

Appellants in United States v. Jefferson County Board of Education, and related cases were served yesterday, April 5, with appellees' [redacted] copy [redacted] memorandum of the United States in opposition.

Counsel for appellants was informed by Deputy Clerk today that appellees Motion and the United States Government Memorandum have been submitted to the court and that little possibility existed for appellant to prepare and file an opposing memorandum, prior to decision. Appellants oppose appellees' Motion and respectfully request the Clerk to bring appellants' opposition to the attention of the court. In support of their opposition, appellants adopt the United States Government Memorandum. If desired by the court, the appellants will submit forthwith a memorandum in opposition. Copies of this telegram have been served on counsel for appellees.

James M. Nabrit, III, Counsel for Appellants.

Edward W. Wadsworth, Clerk
U.S. Court of Appeals
for the FifthCircuit
400 Royal St., Room 408
New Orleans, La.

Dear Mr.Wadsworth:

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25 Contributions are deductible for U. S. income tax purposes

James M. Nabrit, III, Counsel for Appellants.

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

April 11, 1967

TO ALL COUNSEL LISTED BELOW

Re: No. 23345 - U. S. A., et al -vs- Jefferson County Board of Education, et al (And Related Cases)

Gentlemen:

On April 10, 1967, an order was entered denying the motions of appellees for a recall and stay of the mandates in these cases. No opinion was rendered in connection therewith.

Judges Gewin and Bell would grant the motions for a period of five (5) days in order to permit the appellees to make application to the Justices or a Justice of the Supreme Court of the United States for a stay.

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By G. F. Ganucheau
G. F. Ganucheau
Chief Deputy Clerk

GFG/llc

Mr. Macon L. Weaver
Mr. Oscar W. Adams, Jr.
Mr. Orzell Billingsley, Jr.
Mr. Demetrius C. Newton
Mr. David L. Norman
Mr. Maurice F. Bishop
Mr. John C. Satterfield
Mr. Reid B. Barnes
Mr. Norman C. Amaker
Mr. Charles H. Jones, Jr.
Mr. James M. Nabrit, III
Hon. John Doar, Asst. Atty. Gen.
Mr. A. P. Tureaud
Mr. John A. Richardson
Mr. J. Bennett Johnston, Jr.
Hon. Jack P. F. Gremillion

Mr. Alvin J. Bronstein
Mr. Carl Rachlin
Mr. Fred L. Jackson
Mr. William H. Baker
Mr. Robert F. Collins
Mr. Thomas McFerrin, Sr.
Mr. Harry Kron, Jr.
Mr. Teddy W. Airhart, Jr.
Mr. John F. Ward
Mr. Stanley E. Tolliver
Mr. William T. Keenan
Mr. William F. Pipes, Jr.
Mr. Albin P. Lassiter
Mr. Harold B. Judell
Mr. William P. Schuler
Mr. William G. Summerville

File with our Fusion School Cases

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23331

UNITED STATES OF AMERICA, APPELLANT-INTERVENOR,
GEORGE ROBERT BOYKINS, ET AL., INTERVENORS,

v.

FAIRFIELD BOARD OF EDUCATION, ET AL., APPELLEES.

No. 23335

UNITED STATES OF AMERICA, APPELLANT-INTERVENOR,
DORIS ELAINE BROWN, ET AL., INTERVENORS,

v.

THE BOARD OF EDUCATION OF THE CITY
OF BESSEMER, ET AL., APPELLEES

UNITED STATES OF AMERICA, APPELLANT-INTERVENOR

v.

LINDA STOUT, BY HER FATHER AND
NEXT FRIEND, BLEVIN STOUT, INTERVENOR

v.

JEFFERSON COUNTY BOARD OF EDUCATION, APPELLEES.

MEMORANDUM OF THE UNITED STATES IN OPPOSITION TO APPELLEES' MOTION FOR RECALL AND STAY OF MANDATE

The appellees in the Alabama cases have moved this Court to recall its mandate in these cases and to stay its issuance until further order of the Court. The United States opposes the motion for the following reasons.

Such further delay is inconsistent with the Supreme Court's directive: "Delays in desegregating school systems are no longer tolerable. Goss v. Board of Education, 373 U.S. 683, 689; Calhoun v. Latimer, 377 U.S. 263, 264-265; see Watson v. City of Memphis, 373 U.S. 526." Bradley v. School Board of City of Richmond, 382 U.S. 103, 195 (1965). In no desegregation suit, to our knowledge, has the Supreme Court granted a stay of an order requiring desegregation. See e.g., United States v. Louisiana, 364 U.S. 500 (1960); Ennis v. Evans, 364 U.S. 802 (1960); Houston Independent School District v. Ross, 364 U.S. 803 (1960); and see Lucy v. Adams, 350 U.S. 1 (1955); Cooper v. Aaron, 358 U.S. 27 (1958); Danner v. Holmes, 364 U.S. 939 (1961); Board of Education of the City School District of the City of New Rochelle v. Taylor, 82 Sup. Ct. 10 (1961 per Justice Brennan). This Court has long recognized that fact in decisions granting plaintiffs injunctions pending appeal of denials of adequate school desegregation relief. See e.g., Stell v. Savannah-Chatham County Board of Education, 318 F. 2d 425 (5th Cir. 1963); Davis v. Board of School Commissioners of Mobile County, Alabama, 322 F. 2d 356. (5th Cir. 1963); Singleton v. Jackson Municipal Separate School District, 348 F. 2d 729 (5th Cir. 1965); United States v. Wilcox County Board of Education, 366 F. 2d 769 (5th Cir. 1966).

Rule 32 of this Court's rules of practice provide that the mandate can be recalled only by the full court and only to prevent injustice. The full Court has considered the case and rendered what it considers a just decision. This Court's decree contemplates immediate action being taken by the appellees in order to implement a desegregation plan for next year -- the holding of a May choice period, the recruitment of teachers on a non-racial basis, the beginning of a program to eliminate inequalities in school facilities and programs, and the beginning of the establishment of a unitary school transportation system. We believe that recall of the mandate in these cases will not prevent injustice, but will further delay the implementation of the Brown decision.

We have examined appellees' latest brief (Brief of Appellees Following Oral Argument). Pages 39-54 of the brief contain appellees' objections to this Court's decree. Appellees object to provisions requiring non-racial assignment of students and teachers, provisions relating to the mechanics of free choice, and provisions requiring an end to inequalities in facilities and discrimination in construction. We recognize that denial of a stay might cause appellees some administrative inconvenience by having to follow such provisions pending action on the petition for a writ of certiorari. But recalling the mandate will destroy the time sequence essential to the operation of the free choice plan and could -- especially if the case is

not heard by the Supreme Court until the October 1967 Term -- delay for another year the vindication of the constitutional rights of Negro children. Balancing of these interests (Magnum Import Co. v. Coty, 262 U.S. 159, 164 (1923); Meredith v. Fair, 306 F. 2d 374 (5th Cir. 1962)) militates against a recall of the mandate. As the Court of Appeals for the Second Circuit said in Taylor v. Board of Education of City School District of New Rochelle, 294 F. 2d 36, 40 (1961):

> We see no occasion to grant a stay of the decree; the Board is called upon for no new public expenditures and will suffer no loss, while the school children will be prejudiced by what will soon be necessarily a year's delay at this crucial period in their education.

The Supreme Court also denied a stay. 82 Sup. Ct. 10 (1961). Should any of the procedures be found erroneous by the Supreme Court, the appellees will be able to adjust them in future school years. Balancing here clearly requires denial of the stay.

In support of their motion appellees assert that "effective relief by way of review by the Supreme Court will be impaired and some of the issues involved will be rendered moot" if the mandate is not recalled and stayed. They do not say how this will happen, nor do they cite any portions of this Court's decree which would lead to these results.

They do not even state which issues would be rendered moot. They set forth nothing that would establish grounds for further delay. The fact is that the only result that would flow from denial of their motion is the immediate implementation of desegregation plans. These cases would not be rendered "moot" simply because under these desegregation plans more Negroes would be in attendance at previously all white schools and because of a greater desegregation of faculty and staff in each school than would otherwise be the case if the boards had not followed this Court's decree.

This Court recognized that there should be no delay in these cases when, after full consideration of the records, briefs and arguments in these cases, it ordered that the mandate issue immediately.

For the foregoing reasons, we respectfully request the Court to deny appellees' motion to recall this Court's mandate of March 29.

Respectfully submitted,

JOHN DOAR,
Assistant Attorney General.

DAVID L. NORMAN,
JOEL M. FINKELSTEIN,
BRIAN K. LANDSBERG,
Attorneys,
Department of Justice,
Washington, D.C. 20530

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum of the United States in Opposition to Appellees' Motion for Recall and Stay of Mandate has been served by official United States mail in accordance with the rules of this Court to each of the attorneys in the cases to which the foregoing Memorandum applies, addressed as follows:

Hon. Fred L. Jackson
District Attorney
2nd Judicial District
Homer, Louisiana

Hon. Hal R. Henderson
Assistant District Attorney
2nd Judicial District
Homer, Louisiana

William H. Baker, Esq.
Holloway and Baker
Jonesboro, Louisiana

Harris David, Esq.
932 Royal Street
New Orleans, Louisiana

Alvin Bronstein, Esq.
603 North Farish Street
Jackson, Mississippi

Mils Douglas, Esq.
Collins, Douglas and Elie
211 Dryads Street
New Orleans, Louisiana

Hon. Jack P. F. Gremillion
Attorney General
State Capitol Building
Baton Rouge, Louisiana

Hon. Harry Kron, Jr.
Assistant Attorney General
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Mr. Orzell Billingsley, Jr.
1630 - 4th Avenue, North
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Mr. Norman C. Amaker
Mr. Jack Greenberg
Legal Defense
NAACP
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New York, New York

Mr. Maurice F. Bishop
Bishop & Carlton
325-29 Frank Nelson Building
Birmingham, Alabama

Mr. Oscar Adams
1630 Fourth Avenue, North
Birmingham, Alabama

Mr. David H. Hood
2001 Carolina Avenue
Bessemer, Alabama

Mr. J. Howard McEniry
McEniry, McEniry & McEniry
1721 - 4th Avenue, North
Bessemer, Alabama

Mr. Reid B. Barnes
Lange, Simpson, Robinson
and Somerville
317 North 20th Street
Birmingham, Alabama

Mr. John C. Satterfield
P.O. Box 466
Yazoo City, Mississippi

Dated: April 4, 1967

Brian Landsberg

BRIAN K. LANDSBERG,
Attorney,
Department of Justice,
Washington, D.C. 20530

U. S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

AUG 19 1966
FILED
A. DALLAM O'BRIEN, JR.
CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

THOMAS J. SMITH,

Plaintiff,

UNITED STATES OF AMERICA, CIVIL ACTION

Plaintiff-Intervenor, NO. 15463-B

v.

ST. TAMMANY PARISH SCHOOL BOARD, et al.,

Defendants.

AMENDED ORDER

Pursuant to the law, the pleadings, and the arguments of counsel presented in the pre-trial conference of August 17, 1966,

IT IS ORDERED that the desegregation plan of the St. Tammany Parish School System be amended to read as follows:

I

SPEED OF DESEGREGATION

Commencing with the 1966-1967 school year, grades 3 and 10 shall be desegregated in addition to grades 1, 2, 11 and 12 which are already desegregated by virtue of the present order; desegregation of all grades shall be accomplished by the beginning of the 1967-68 school year.

II

EXERCISE OF CHOICE

The following provisions shall apply in each desegregated grade:

(a) Who May Exercise Choice. A choice of schools may be exercised by a parent or other adult person serving as a

FEE
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X CHARGE
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ORDER
HEARING
DOCUMENT NO.

student's parent. A student may exercise his own choice if he (1) is exercising a choice for the ninth or a higher grade, or (2) has reached the age of fifteen at the time of the exercise of choice. Such a choice by a student is controlling unless a different choice is exercised for him by his parent or other adult person serving as his parent during the choice period or at such later time as the student exercises a choice. Each reference in this decree to a student exercising a choice means the exercise of the choice, as appropriate, by a parent or such adult, or by the student himself.

(b) Exercise of Choice.

(1) For the 1966-67 school year only, all Negro students in desegregated grades shall be required to exercise a free choice of schools.

(2) Beginning with the choice period conducted in March of 1967, all students, both white and Negro, in all grades, shall be required to exercise a free choice of schools annually.

(c) Choice Period. The period for exercising choice for the 1966-1967 school year shall commence on August 29, 1966, the opening day of the 1966-1967 school term, and end on September 2, 1966. In the years following, the period for exercising choice shall commence on March 1, and end on March 31, preceding the school year for which the choice is to be exercised. No student or prospective student who exercises his choice within the choice period shall be given any preference because of the time within the period when such choice was exercised.

(d) Mandatory Exercise of Choice.

(1) For the 1966-1967 school year only, any student failing to exercise a choice shall

be assigned to the school to which he was assigned under the desegregation plan in effect prior to this decree, subject to his right to request transfer to a different school as provided under Section IV of this order.

(2) Beginning with the choice period conducted in March of 1967, a failure to exercise a choice within the choice period shall not preclude any student from exercising a choice at any time before he commences school for each succeeding school year for the year with respect to which choice applies, but such choice may be subordinated to the choice of students who exercised choice before the expiration of the choice period. Any student who has not exercised his choice of school before the school year commences must exercise his choice when he first appears for school at the commencement of the school year.

(e) Public Notice. On or within a week before the date the choice period opens, the defendants shall arrange for the conspicuous publication of a notice describing the provisions of this decree in the newspaper most generally circulated in the community. The text of each of the above notices shall be similar to the text of the explanatory letter sent home to parents. Publication as a legal notice will not be sufficient. Copies of these notices must also be given at that time to all radio and television stations serving the community. Copies of this decree shall be posted in each school in the school system and at the office of the superintendent.

(f) Personal Notice. On the first day of the choice period the defendant school board shall distribute an explanatory letter and a choice form to all students who are or will be eligible to enter a desegregated grade. The defendant school board shall make the distribution of this letter and form for the 1966-1967 school year by distributing such letter and form to each student at the school with instructions to transmit them to his parent or other adult person acting as his parent and for subsequent years by the above method or by mail to each student's parent or other adult person acting as the student's parent. The text for the explanatory letter and choice form shall conform as nearly as possible to the sample letter and choice form appended to this order (Appendices A and B).

(g) Extra Copies of the Explanatory Letter and Choice Form. Extra copies of the explanatory letter and choice form shall be freely available to parents, students, prospective students and the general public at each school in the system and at the office of the superintendent.

(h) Return of Choice Form. For the 1966-1967 school year, the choice form shall be returned on or before September 2, 1966, in person, or by messenger to the school to which the student exercising a choice would have been assigned under the desegregation plan in effect prior to the issuance of this decree. In succeeding years, at the option of the person completing the choice form, it may be returned, by mail, in person, or by messenger to any school in the school system or to the office of the superintendent.

(i) Choices Not on Official Form. The exercise of choice may also be made by the submission in like manner of any other writing which contains information sufficient to identify the student and his address and indicates his grade and choice of school.

(j) Choice Forms Binding. Once a choice form has been submitted, and the choice period having expired, the choice is binding for the entire school year and may not be changed except in cases of parents making different choices than their children under the conditions set forth in paragraph II (a) of this decree and in cases where compelling hardship is shown by the student.

(k) Preferences in Assignment. In assigning students to schools, no preferences shall be given to any student for prior attendance at a school, and no choice shall be denied for any reason other than overcrowding. In case of overcrowding at any school, preference shall be given on the basis of the proximity of the school to the homes of the students choosing, and, with respect to the 1966 choice period, already attending, it, without regard to race or color, but preference may also be given in order to permit siblings living in the same household to attend the same school, or to permit a child to attend a school where his parent may be regularly employed.

(l) Any student whose choice is denied must be notified in writing, not later than September 9, 1966, for the 1966-1967 school year, and no later than May 1st for subsequent years, and given another choice of any school in the school system serving his grade level where space is available. For the 1966-1967 school year only, choice forms may require that a student indicate his first and second choice, but no form shall be rejected for failure to indicate two choices.

(m) Transportation. School buses will be routed to the greatest extent which is reasonable in light of the geographic distribution of students, so as to serve each student choosing any school in the system. This provision shall apply only where school transportation is supplied for all students who

live more than a mile from the school which the student attends.

(n) Official Not to Influence Choice. At no time shall any official, teacher, or employee of the school system influence any parent, or other adult person serving as a parent, or any student, in the exercise of a choice, or favor or penalize any person because of a choice made. If the defendant school board employs professional guidance counselors, such persons may give guidance and counseling to individual students based on the student's particular academic and vocational needs. Such guidance and counseling shall be available to all students without regard to race or color. Information concerning individual choices made or schools to which individual students are assigned shall not be made public.

(o) During the 1966-1967 school year only, the second week of school (September 6 through September 9) may be used by the school board to work out the administrative problems, if any, caused by the choice by students of schools other than the schools to which they were assigned under the desegregation plan in effect prior to this decree. During this week, such students may be required to attend the schools to which they were assigned under the desegregation plan in effect prior to this decree. On or before September 9, 1966, each student exercising a choice shall be notified which school he shall attend and he shall begin such attendance no later than September 12, 1966. The school board shall take all steps necessary to insure that no student transferring in September, 1966, is hampered because of his reassignment. To this end, the school board shall require the teachers of those students to adequately assist those students to adapt themselves to their new regime and to grasp matter presented to the rest of the class prior to the transfer of such students. Morever, such teachers shall be directed, in determining the marks and class scores of the transferring students, not to penalize such students for their

unavoidable absence from class prior to their transfer, insofar as teacher assistance is not adequate to properly acquaint such students with the classwork missed.

III

NEW STUDENTS

Each new student shall be required to exercise a choice of schools before enrollment. Each such student shall be furnished a copy of the prescribed letter to parents, and choice form, by mail or in person, on the date the choice period opens or as soon thereafter as the school system learns that he plans to enroll. Each shall be given an opportunity to exercise his choice during the choice period. A prospective student exercising his choice after the choice period shall be given at least one week to do so.

IV

TRANSFERS

(a) Transfers for Special Needs. Any student shall be permitted, upon his written application, to transfer to another school which is designed to fit or offer courses for his special academic or physical needs.

(b) Transfers for Students in Non-Desegregated Grades. Any student entering a grade to which the choice provisions of this decree do not yet apply, shall have the right to transfer to any school from which he would otherwise be excluded on account of his race or color.

V

SERVICES, FACILITIES, ACTIVITIES AND PROGRAMS

No student shall be segregated or discriminated against on account of race or color in any services, facilities, activities or programs (including transportation, athletics, or other extracurricular activity) that may be conducted or spon-

sored by, or affiliated with, the school in which he is enrolled. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer student. Provided, however, that the provisions of this paragraph shall apply only where either the St. Tammany Parish School Board or its agents or employees are responsible, either directly or indirectly, for any segregation or discrimination in such services, facilities, activities or programs, or for the order or regulation establishing the disqualification or waiting period.

VI

SCHOOL EQUALIZATION

(a) Equal Quality. In all schools, the defendants shall take all reasonable steps necessary to provide physical facilities, equipment, courses and instructions of equal quality. Conditions of overcrowding as determined by pupil-teacher and pupil-classroom ratios shall, to the greatest extent possible, be distributed evenly between all schools. If for any reason it is not feasible to improve sufficiently any school where such improvements would otherwise be required by this subparagraph, such school shall be closed as soon as possible, and students enrolled in the school shall be permitted to exercise a freedom of choice.

(b) Remedial Programs. The defendants shall provide remedial education programs which permit students attending or who have previously attended all-Negro schools to overcome past inadequacies in their education, where those inadequacies resulted from their previous attendance at all-Negro schools and would not have resulted had their previous attendance been at all-white schools.

VII

FACULTY AND STAFF

(a) Teachers and other professional personnel will be employed solely on the basis of qualifications and without regard to race or color. Teachers and other professional staff members may not be dismissed, demoted, or passed over for retention, promotion or rehiring, on the ground of race or color.

(b) In the recruitment and employment of teachers and other professional personnel, all applicants and other prospective employees will be informed that the School Board operates a racially ~~integrated~~ desegregated school system and that the teachers and other professional personnel in the system are subject to assignment in the best interest of the system and without regard to their race or color.

(c) The Superintendent of Schools and his staff will take affirmative steps to solicit and encourage teachers presently employed in the system to accept transfers to schools in which the majority of the faculty members are of a race different from that of the reacher to be transferred. Such transfers will be made by the Superintendent and his staff in all cases in which the teachers are qualified and suitable, apart from race or color, for the positions to which they are to be transferred.

(d) During the 1966-1967 school year the defendants will conduct desegregated faculty meetings and desegregated joint inservice programs.

(e) Commencing with the start of the 1967-1968 school year, the Superintendent will fill all faculty vacancies by reassigning the then presently employed faculty members and by assigning newly employed faculty members to such vacancies in a manner that will correct the effects of the past pattern of assignments based upon race, to the end that the faculty of each school will be composed of both white and Negro teachers. Such

assignments and transfers will be made by the Board in those cases in which the teachers are qualified and suitable, apart from race or color, for the position to which they are to be assigned or transferred.

(f) Commencing with the start of the 1967-1968 school year, in any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system shall be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system the past assignment of any teacher or staff member, where such past assignment was based upon race or color, shall not be considered in determining whether he shall be released.

VIII

REPORTS TO THE COURT

(a) Report on Choice Period. The defendants shall serve upon opposing counsel and file with the Clerk of the Court on or before September 30, 1966, and each subsequent year on or before June 1, a report tabulating by race the number of choice applications received for enrollment in each grade of each school in the system. The report shall also state any reasons relied upon in denying choice and shall tabulate, by school and by race of student, the number of choices denied for each such reason.

(b) Report after School Opening. Beginning with the 1967-1968 school year the defendants shall serve upon opposing counsel and file with the Clerk of the Court fifteen days after the opening of schools for the fall semester each year, a report setting forth the following information:

(i) The name, address, grade, school of choice and

school of present attendance of each student who has withdrawn or requested withdrawal of his choice of school or who has transferred after the start of the school year, together with a description of any action taken by the defendants on his request and the reasons therefor.

(ii) The number of faculty vacancies by school, that have occurred or been filled by the defendants since the order of this Court or the latest reports submitted pursuant to this subparagraph. This report shall state the race of the reacher employed to fill each such vacancy and indicate whether such teacher is newly employed or was transferred from within the system. The tabulation of the number of transfers within the system should indicate the schools from which and to which the transfers were made. The report shall also set forth the number of faculty members of each race assigned to each school for the current year.

(iii) A description of any steps or programs instituted by the defendants pursuant to paragraph V of this decree.

The costs incurred in this proceeding to date are hereby taxed against the defendants.

New Orleans, Louisiana, this 19th day of August, 1966.

Frederick J. R. Heebe
UNITED STATES DISTRICT JUDGE

APPENDIX A*

School System Name and Office Address

date sent

Dear Parent:

(All) Grades [_____] in our school system will be desegregated for the _____ school year. Any student who [is] (will be) entering one of these grades this fall may choose to attend any school in our system, regardless of whether that school was formerly all-white or all-Negro. It does not matter which school your child is now attending or attended last year. You and your child may select any school you wish [even though your child may have previously been assigned to a particular school].

(Every student, white and Negro, who will attend school in the fall must make a choice of schools.) If a child is entering the ninth or a higher grade, or if the child is fifteen years old or older, he may make the choice himself. Otherwise a parent or other adult serving as parent must sign the choice form.

The form on which the choice should be made is attached to this letter. It should be completed and returned by _____. You may (mail it in the enclosed envelope, or) deliver it by messenger or by hand to (any school principal or to the Office of the Superintendent at any time between _____ and _____.) [the school to which the student exercising the choice was assigned prior to the completion of the form.] No one may require you to return your choice form before _____ and no preference is given for returning the choice form early.

No principal, teacher or other school official is permitted to influence anyone in making a choice or to require early return of the choice form. No one is permitted to favor or penalize any student or other person because of a choice made. A choice once made cannot be changed except for serious hardship.

No child will be denied his choice unless for reasons of overcrowding at the school chosen, in which case the children living nearest the school will have preference.

Transportation will be provided, if reasonably possible, no matter what school is chosen.

Your School Board and the school staff will do everything we can to see to it that the rights of all students are protected and that desegregation of our schools is carried out successfully.

Sincerely yours,

Superintendent

* In Appendices A and B, bracketed matter should be used in the September 1966 letter and omitted thereafter; matter in parentheses should not be used in the September 1966 letter but should be used thereafter.

APPENDIX B*

CHOICE FORM

This form is provided for you to choose a school for your child to attend this fall. You have until [September 2, 1966] (30 days) to make your choice. It does not matter which school your child attended last year or is attending this year, and it does not matter whether the school you choose was formerly a white or a Negro school. This form must be [delivered by messenger or by hand by September 2, 1966, to the school to which the student exercising the choice was assigned prior to the completion of the form] (mailed or brought by messenger or by hand to the principal of any school in the system or to the office of the Superintendent, ___address_____, by _____). (A choice is required for each child.)

Name of child _____
(Last) (First) (Middle)

Address _____

Name of parent or other
adult serving as parent _____

If child is entering first grade, date of birth:

_____
(Month) (Day) (Year)

Grade child is [in] (entering) _____

School now attending _____

Choose one of the following schools by marking an X beside the name.

Name of School	Grades Served	Location

Signature _____

Date _____

To be filled in by Superintendent:

School Assigned _____

WILLIE ELLIOT JENKINS, ET AL
Palintiffs
UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

CA 15798

vs

CITY OF BOGALUSA SCHOOL BOARD,
et al

Defendants

SUPPLEMENTAL AND AMENDED ORDER

Pursuant to the law, the pleadings and the evidence:

IT IS ORDERED that the following provisions are added for the purpose of amending and supplementing the present desegregation plan of the City of Bogalusa School System.

EXERCISE OF CHOICE

The following provisions shall apply in each desegregated grade:

(a) Who may Exercise Choice. A choice of schools may be exercised by a parent or other adult person serving as the student's parent. A student may exercise his own choice if he (1) is exercising a choice for the ninth or a higher grade, or (2) has reached the age of fifteen at the time of the exercise of choice. Such a choice by a student is controlling unless a different choice is exercised for him by his parent or other adult person serving as his parent during the choice period or at such later time as the student exercises a choice. Each reference in this decree to a student exercising a choice means the exercise of the choice, as appropriate, by a parent or such adult, or by the student himself.

(b) Annual Exercise of Choice. All students, both white and Negro, shall be required to exercise a free choice of schools annually.

(c) Choice Period. The period for exercising choice for the 1966-67 school year shall commence on August 22, 1966, and end on August 29, 1966, for students entering the first grade. In the years following, the period for exercising choice for all desegregated grades shall commence on March 1, and end on March 31, preceding the school

year for which the choice is to be exercised. No student or prospective student who exercises his choice within the choice period shall be given any preference because of the time within the period when such choice was exercised.

(d) Mandatory Exercise of Choice. A failure to exercise a choice within the choice period shall not preclude any student from exercising a choice at any time before he commences school for the year with respect to which choice applies, but such choice may be subordinated to the choices of students who exercised choice before the expiration of the choice period. Any student who has not exercised his choice of school within a week after school opens shall be assigned to the school nearest his home where space is available under standards for determining available space which shall be applied uniformly throughout the system.

(e) Public Notice. On or within a week before the date the choice period opens, the defendants shall arrange for the conspicuous publication of a notice describing the provisions of this decree in the newspaper most generally circulated in the community. The text of the notice shall be similar to the text of the explanatory letter sent home to parents. Publication as a legal notice will not be sufficient. Copies of this notice must also be given at that time to all radio and television stations serving the community. Copies of this decree shall be posted in each school in the school system and at the office of the superintendent.

(f) Personal Notice. On the first day of the choice period the defendant school board shall distribute an explanatory letter and a choice form to all students who will be entering a desegregated grade in the following year. The defendant school board shall make the distribution of a letter and form either by distributing such letter and form to each student at the school with instructions to transmit to his parent or other adult person acting as his parent or by mail to each student's parent or other adult person acting as the student's parent. The text for the explanatory letter and choice form shall conform as nearly as

possible to the sample letter and choice form appended to this decree (Appendices A and B).

(g) Extra Copies of the Explanatory Letter and Choice Form. Extra copies of the explanatory letter and choice form shall be freely available to parents, students, prospective students and the general public at each school in the system and at the office of the superintendent.

(h) Return of Choice Form. At the option of the person completing the choice form, the choice may be returned by mail, in person, or by messenger to any school in the school system or to the office of the superintendent.

(i) Choices Not on Official Form. The exercise of choice may also be made by the submission in like manner of any other writing which contains information sufficient to identify the student and indicates that he has made a choice of school.

(j) Choice Forms Binding. Once a choice form has been submitted, and the choice period having expired, the choice is binding for the entire school year and may not be changed except in cases of parents making different choices than their children under the conditions set forth in paragraph I(a) of this decree and in cases where compelling hardship is shown by the student.

(k) Preferences in Assignment. In assigning students to schools, no preferences shall be given to any student for prior attendance at a school, and no choice shall be denied for any reason other than overcrowding. In case of overcrowding at any school, preference shall be given on the basis of the proximity of the school to the homes of the students choosing it, without regard to race or color, but preference may also be given in order to permit siblings living in the same household to attend the same school, or to permit a child to attend a school where his parent may be regularly employed.

(l) Second Choice Where First Choice is Denied. Any student whose choice is denied must be promptly notified in writing and given his choice of any school in the school system serving his

grade level where space is available.

(m) Transportation. School buses will be routed to the greatest extent which is reasonable in light of the geographic distribution of students, so as to serve each student choosing any school in the system. This provision shall apply only where school transporation is supplied for all students who live more than a mile from the school which the student attends.

(n) Official Not to Influence Choice. At no time shall any official, teacher, or employee of the school system influence any parent, or other adult person serving as a parent, or anystudent, in the exercise of a choice, or favor or penalize any person because of a choice made. If the defendant school board employs professional guidance counselors, such persons may give guidance and counseling to individual students based on the student's particular academic and vocational needs. Such guidance and counseling shall be available to all students without regard to race or color. Information concerning individual choices made or schools to which individual students are assigned shall not be made public.

II

NEW STUDENTS

Each new student shall be required to exercise a choice of schools before enrollment. Each such student shall be furnished a copy of the prescribed letter to parents, and choice form, by mail or in person, on the date the choice period opens or as soon thereafter as the school system learns that he plans to enroll. Each shall be given an opportunity to exercise his choice during the choice period. A prospective student exercising his choice after the choice period shall be given at least one week to do so.

III

TRANSFERS

(a) Transfers for Special Needs. Any student who is physically handicapped, may be permitted, upon his written application, to transfer to another school which is designed to fit or offer courses for his special

needs.

(b) Transfers for Students in Non-Desegregated Grades. Any student entering a grade to which the choice provisions of this decree do not yet apply, shall have the right to transfer to any school from which he would otherwise be excluded on account of his race or color.

IV

SERVICES, FACILITIES, ACTIVITIES AND PROGRAMS

No student shall be segregated or discriminated against on account of race or color in any service, facility, activity or program (including transportation, athletics, or other extracurricular activity) that may be conducted or sponsored by, or affiliated with, the school in which he is enrolled. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer student, except that the provisions of this sentence shall apply only where either the City of Bogalusa School Board or its agents or employees are responsible , either directly or indirectly, for the order or regulation establishing the disqualification or waiting period.

V

SCHOOL EQUALIZATION

(a) Inferior schools. In schools heretofore maintained for Negro students, the defendants shall take all reasonable steps necessary to provide physical facilities, equipment, courses, and instruction of quality equal to that provided in schools previously maintained for white students. Conditions of overcrowding, as determined by pupil-teacher ratios and pupil-classroom ratios shall, to the extent possible, be distributed evenly between schools formerly maintained for Negro students and those formerly maintained for white students. If for any reason it is not feasible to improve sufficiently any school formerly maintained for Negro students, where such improvements would otherwise be required by this subparagraph, such school shall be closed as soon as possible, and students enrolled in the school shall be reassigned on the basis of freedom of

choice.

(b) Remedial Programs. The defendants shall provide remedial education programs which permit students attending or who have previously attended all-Negro schools to overcome past inadequacies in their education, where those inadequacies resulted from their previous attendance at all-Negro schools and would not have resulted had their previous attendance been at all-white schools.

VI

FACULTY AND STAFF

(a) Teachers and other professional personnel will be employed solely on the basis of qualifications and without regard to race or color.

(b) In the recruitment and employment of teachers and other professional personnel, all applicants and other prospective employees will be informed that the School Board operates a racially integrated school system and that the teachers and other professional personnel in the system are subject to assignment in the best interest of the system and without regard to their race or color.

(c) The Superintendent of Schools and his staff will take affirmative steps to solicit and encourage teachers presently employed in the system to accept transfers to schools in which the majority of the faculty members are of a race different from that of the teacher to be transferred. Such transfers will be made by the Superintendent and his staff in all cases in which the teachers are qualified and suitable, apart from race or color, for the positions to which they are to be transferred.

(d) The Superintendent will fill all faculty vacancies by reassigning presently employed faculty members and by assigning newly employed faculty members to such vacancies in a manner that will correct the effects of the past pattern of assignments based upon race, to the end that the faculty of each school will be composed of both white and Negro teachers. Such assignments and transfers will be made by the Board in those cases in which the teachers are qualified and suitable, apart from race or color, for the position to which they are to be assigned

or transferred.

(e) Teachers and other professional staff members may not be dismissed, demoted, or passed over for retention, promotion or rehiring, on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system shall be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there isto be a reduction in the total professiona l staff of the school system the past assignment of any teacher or staff member, where such past assignment was based upon race or color, shall not be considered in determining whether he shall be released.

VII

REPORTS TO THE COURT

(a) Report on Choice Period. The defendants shall serve upon the opposing parties and file with the Clerk of the Court on or before September 30, 1966, and each subsequent year on or before June 1, a report tabulating by race the number of choice applications received for enrollment in each grade of each school in the system. The report shall also state any reasons relied upon in denying choice and shall tabulate, by school and by race of student, the number of choices denied for each such reason.

(b) Report after School Opening. The defendants shall serve upon opposing counsel and file with the Clerk of the Court fifteen days after the opening of schools for the fall semester each year, a report setting forth the following information:

(i) The name, address, grade, school of choice and school of present attendance of each student who has withdrawn or requested withdrawal of his choice of school or who has transferred after the start of the school year, together with a description of any action taken by the defendants on his request and the reasons therefor.

or transferred.

(e) Teachers and other professional staff members may not be dismissed, demoted, or passed over for retention, promotion or rehiring, on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system shall be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there isto be a reduction in the total professiom l staff of the school system the past assignment of any teacher or staff member, where such past assignment was based upon race or color, shall not be considered in determining whether he shall be released.

VII

REPORTS TO THE COURT

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(b) Report after School Opening. The defendants shall serve upon opposing counsel and file with the Clerk of the Court fifteen days after the opening of schools for the fall semester each year, a report setting forth the following information:

(i) The name, address, grade, school of choice and school of present attendance of each student who has withdrawn or requested withdrawal of his choice of school or who has transferred after the start of the school year, together with a description of any action taken by the defendants on his request and the reasons therefor.

(ii) The number of faculty vacancies by school, that have occurred or been filled by the defendants since the order of this Court or the latest reports submitted pursuant to this subparagraph. This report shall state the race of the teacher employed to fill each such vacancy and indicate whether such teacher is newly employed or was transferred from within the system. The tabulation of the number of transfers within the system should indicate the schools from which and to which the transfers were made. The report shall also set forth the number of faculty members of each race assigned to each school for the current year.

(iii) A description of any steps or programs instituted by the defendants pursuant to paragraph V of this decree.

The costs incurred in this proceeding to date are hereby taxed against the defendants.

New Orleans, Louisiana, this 15 day of August 1966, 1966.

(Signed) FREDERICK J. R. HEEBE

UNITED STATES DISTRICT JUDGE

APPENDIX A*

(School System Name and Office Address)

(Date Sent)

Dear Parent:

Grades _____ in our school system will be desegregated next year. Any student who will be entering one of these grades next year may choose to attend any school in our system, regardless of whether that school was formerly all-white or all-Negro. It does not matter which school your child is attending this year. You and your child may select any school you wish.

Every student, white and Negro, who is entering a desegregated grade must make a choice of schools. If a child is entering the ninth or a higher grade, or if the child is fifteen years old or older, he may make the choice himself. Otherwise a parent or other adult serving as parent must sign the choice form.

The form on which the choice should be made is attached to this letter. It should be completed and returned by _____. You may mail it in the enclosed envelope, or deliver it by messenger or by hand to any school principal or to the office of the Superintendent at any time between _____ and _____. No one may require you to return your choice form before _____ and no preference is given for returning the choice form early.

No principal, teacher or other school official is permitted to influence anyone in making a choice or to require early return of the choice form. No one is permitted to favor or penalize any student or other person because of a choice made. A choice once made cannot be changed except for serious hardship.

No child will be denied his choice unless for reasons of overcrowding at the school chosen, in which case children living nearest the school will have preference.

Transportation will be provided, if reasonably possible, if the school chosen is more than one mile in distance from the residence or home of the pupil. [Delete if the school system does not provide transportation.]

Your School Board and the school staff will do everything we can to see to it that the rights of all students are protected and that desegregation of our schools is carried out successfully.

Sincerely yours,

Superintendent

*The language of the letter and the choice form should be amended where necessary to conform to the provisions of this order with respect to the grade 1 choice period in August 1966.

APPENDIX B*

CHOICE FORM

This form is provided for you to choose a school for your child to attend next year. You have 30 days to make your choice. It does not matter which school your child attended last year, and it does not matter whether the school you choose was formerly a white or Negro school. This form must be mailed or brought to the principal of any school in the system or to the office of the Superintendent, [address], by _____.

A choice is required for each child.

Name of child_____
(Last) (First) (Middle)

Address_____

Name of Parent or other
adult serving as parent_____

If child is entering first grade, date of birth:

_____
(Month) (Day) (Year)

Grade child is entering _____

School attended last year _____

Choose one of the following schools by marking an X beside the name.

Name of School	Grade	Location
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Signature _____

Date _____

_____

_____

To be filled in by Superintendent:

School Assigned_____

*The language of the letter and the choice form should be amended where necessary to conform to the provisions of this order with respect to the grade 1 choice period in August 1966.

CARL RACHLIN

SEGREGATED SCHOOLS IN BOGALUSA, LOUISIANA

	NEGRO	WHITE	If distribution was equal for both White & Negro: NEGRO	If distribution was equal for both White & Negro: WHITE
1. Number of schools				
2. Students				
A. Number	2436	4309		
B. Number grade 1-8	1843	2988		
C. Number grade 9-12	593	1311		
D. Students per teacher	26	25	25	25
E. Money spent per student for instructional services	200	252		
3. Teachers				
A. Number	92	173	97	172
B. Number grade 1-8	64	112		
C. Number grade 1-12	28	61		
D. Special Education	0	2		
4. Principals				
A. Number	4	10		
B. Average Salary				
5. School library				
A. Number of Books	13,576	28,600		
B. Value of books, furniture, etc.	37,202	80,620		
C. Money spent for salaries, new books & supplies	6666	22,340		
6. Money spent for operation of schools				
A. Grades 1-8	307,691	505,390		
B. Grades 9-12	124,358	399,502		

(CONTINUE)

	NEGRO	WHITE	If distribution was equal for both races: NEGRO	WHITE
6. Money spent for operation of schools (continued)				
C. Per instructor	4696	5231	5014	5014
D. For teaching materials & supplies	4837	10,386		
E. Total money spent for instructional services	488,186	1,904,738		
7. Value of school property, buildings, sites, and equipment				
A. School buildings	1,193,010	3,799,000		
B. sites of schools	49,050	206,280		
C. Equipment in schools	259,896	557,192		
8. Sabbatical leave for teachers	None	5,960		
9. School buses				
A. Number of vehicles	3	19	8	14
* B. Number of students per vehicle	812	227	307	307
10. Students to college	20	78		

* based on all students - not just those who ride the buses

SEGREGATED SCHOOLS IN CLAIBORNE PARISH, LOUISIANA

	NEGRO	WHITE	If Distribution was equal for both White & Negro: NEGRO	WHITE
1. Number of Schools				
2. Students				
A. Number	2779	1997		
B. Number 1-8	1920	1338		
C. Number grade 9-12	859	647		
D. Students per teacher	24	20	22	22
E. Money spent per student for instructional services	227	316		
3. Teachers				
A. Number	116	101	126	91
B. Number grade 1-8	75	54		
C. Number grade 1-12	41	47		
D. Special Education	0	2		
4. Principals				
A. Number				
B. Average Salary	4	6		
5. School Library				
A. Number of Books	15,794	25,001		
B. Value of books, furniture, etc.	36,945	65,285		
C. Money spent for Salaries, new books & supplies	16,522	27,506		
6. Money spent for Operation of Schools				
A. Grades 1-8	404,334	272,164		
B. Grades 9-12	181,841	263,626		

(CONTINUED)

	NEGRO	WHITE	If distribution was equal for both races: NEGRO	WHITE
Money spent for operation of schools (continued)				
C. Per instructor	$ 5,053	$ 5305	5129	5129
D. For teaching materials & supplies	5,231	5070		
E. Total money spent for instructional services	631,792	649,868		
7. Value of school property, buildings, sites and equipment				
A. school buildings	1,155,000	1,788,400		
B. sites of schools	39,100	44,424		
C. equipment in schools	172,561	496,788		
8. Sabbatical Leave for teachers	NONE	5,700		
9. School buses				
A. Number of vehicles	31	29	35	25
* B. Number of students per vehicle	90	69	80	80
10. Students to college	70	92		

* Figures on the buses of all students - not just those who ride the buses.

SEGREGATED SCHOOLS IN CONCORDIA PARISH, LOUISIANA

	NEGRO	WHITE	If distribution was equal for both white & Negro	
			NEGRO	WHITE
1. Number of schools				
2. Students				
A. Number	3280	3606		
B. Number grade 1-8	2575	2734		
C. Number grade 9-12	645	850		
D. Students per teacher	35	27	31	31
E. Money spent per student for instructional services	154	208		
3. Teachers				
A. Number	91	130	104	117
B. Number grade 1-8	65	88		
C. Number grade 1-12	26	42		
D. Special Education	0	2		
4. Principals				
A. Number	4	9		
B. Average Salary				
5. School Library				
A. Number of Books	9956	16,505		
B. Value of books, furniture, etc.	21,237	40,587		
C. Money spent for salaries, new books & supplies	7,015	23,389		
6. Money spent for operation of schools				
A. Grade 1-8	334,171	352,138		
B. Grades 9-12	114,400	288,706		

CONTINUED

	Negro	WHITE	If distribution was equal for both white & Negro NEGRO	WHITE
6. Money spent for operation of schools (continued)				
C. Per instructor	4929	4930	4930	4930
D. For teaching mateirals & supplies	2,430	4,145		
E, Total money spent for instructional services	494,430	749,409		
7. Value of school property, buildings, sites and equipment				
A. School buildings	1,196,287	2,383,406		
B. Sites of schools	95,598	160,003		
C. Equipment in Schools	215,799	618,066		
8. Sabbatical leave for teachers	None	1,502		
9. School buses				
A. Number of vehicles	20	43	30	33
* B. Number of students per vehicle	161	84	108	108
10. Students to college	36	63		

* figured on the bases of all students-not just those who ride the bus

SEGREGATED SCHOOLS IN IBERVILLE PARISH, LOUISIANA

	NeGRO	WHITE	If distribution was equal for both White & Negro NEGRO	WHITE
1. Number of schools				
2. Students				
A. Number	4726	3244		
B. Number grade 1-8	3513	2378		
C. Number grade 9-12	1213	866		
D. Students per teacher	29	24	27	27
E. Money spent per student for instructional services	186	254		
3. Teachers				
A. Number	162	136	175	120
B. Number grade 1-8	108	82		
C. Number grade 1-12	60	54		
D. Special Education	1	2		
4. Principals				
A. Number	9	8		
B. Average Salary				
5. School library				
A. Number of Books	20894	30,129		
B. Value of books, furniture, etc.	50,464	61,874		
C. Money spent for salaries, new books & supplies	18,526	21,422		
6. Money spent for operation of schools				
A. Grades 1-8	493,772	406,407		
B. Grades 9-12	281,913	297,566		

CONTINUED

	NEGRO	WHITE	If distribution was equal for both races: NEGRO	If distribution was equal for both races: WHITE
6. Money spent for operation of schools (continued)				
C. Per instructor	4788	5176	4982	4982
D. For teaching materials & supplies	12,738	13, 486		
E. Total money spent for instructional services	879,157	825,481		
7, Value of school property, buildings, sites and equipment				
A. School buildings	2,102,667	2,648,971		
B. Sites of schools	56,000	97,628		
C. Equipment in schools	217,414	207,408		
8. Sabbatical leave for teachers	6,500	6,200		
9. School buses				
A. Number of vehicles	32	47	47	32
* B. Number of students per vehicle	148	69	101	101
10. Students to college	57	56		

* based on all students--not just those using buses

Segregated schools in Jackson Parish, Louisiana

	NEGRO	WHITE	If distribution was equal for both White & Negro: NEGRO	If distribution was equal for both White & Negro: WHITE
1. Number of schools				
2. Students				
A. Number	1669	2646		
B. Number grade 1-8	1160	1761		
C. Number grade 9-12	488	851		
D. Students per teacher	24	21	22	22
E. Money spent per student for instructional services	247	293		
3. Teachers				
A. Number	71	123	76	120
B. Number grade 1-8	41	65		
C. Number grade 1-12	30	58		
D. Special Education	2	4		
4. Principals				
A. Number	3	8		
B. Average Salary				
5. School library				
A. Number of books	7318	22,081		
B. Value of books, furniture, etc.	19,246	55,901		
C. Money spent for salaries, new books & supplies	5,000	15,123		
6. Money spent for operation of schools				
A. Grades 1-8	211,200	324,113		
B. Grades 9-12	148,576	310,842		

Continued

	NEGRO	WHITE	If distribution was equal for both races: NEGRO	WHITE
6. Money spent for operation of schools (continued)				
C. Per instructor	5,067	5162	5115	5115
D. For teaching materials & supplies	2965	5426		
E. Total money spent for instructional services	412,940	775,824		
7. Value of school property, buildings, sites and equipment				
A. School buildings	1,053,608	2,101,734		
B. Sites of Schools	21,385	57,650		
C. Equipment in schools	140,703	351,404		
8. Sabbatical leave for teachers	None	1,478		
9. School Buses				
A. Number of vehicles	16	32	19	29
* B. Number of students per vehicle	104	83	90	90
10. Students to college	40	79		

* based on all students - not just those who ride the bus

SEGREGATED SCHOOLS IN MADISON PARISH, LOUISIANA

	NEGRO	WHITE	If distribution was equal for both White & Negro: NEGRO	WHITE
L. Number of schools				
2. Students				
A. Number	3383	1540		
B. Number grade 1-8	2685	1137		
C. Number grade 9-12	698	403		
D. Students per teacher	28	24	27	27
E. Money scent per student for instructional services	177	250		
3. Teachers				
A. Number	117	64	127	70
B. Number grade 1-8	77	34		
C. Number grade 1-12	40	30		
D. Special education	1	1		
4. Principals				
A. Number	3	5		
B. Average Salary				
5. School library				
A. Number of books	19,838	14,632		
B. Value of books, furniture, etc.	48,400	35,350		
C. Money spent for salaries, new books & supplies	11,412	10,522		
6. Money spent for operation of schools				
A. Grades 1-8	376,164	161,300		
B. Grades 9-12	177,958	153,576		

(Continued)

	NEGRO	WHITE	If distribution was equal for both races: NEGRO	WHITE
6. Money spent for operation of schools (continued)				
C. Per instructor	4703	4805	4754	4754
D. For teaching materials & supplies	149,059	117,770		
E. Total money spent for instructional services:	11,307,978	9,935,726		
7. Value of school property, buildings, sites and equipment				
A. School buildings	34,957,475	45,875,228		
B. Sites of schools	5,841,426	5,553,561		
C. Equipment in schools	3,713,278	4,791,545		
8. Sabbatical leave for teachers	52,721,	84,333		
9. School buses				
A. Number of vehicles	27	64	55	36
* B. Number of students per vehicle	2358	657	1151	1151
10. Students to college	681	1049		

* based on all students- not just those who ride the buses

SEGREGATED SCHOOLS IN CITY OF MONROE, LOUISIANA

	NEGRO	WHITE	If distribution was equal for both White& Negro NEGRO	WHITE
1. Number of schools				
2. Students				
A. Number	5351	5328		
B. Number grade 1-8	4123	4182		
C. Number grade 9-12	1228	1146		
D. Students per teacher	27	23	25	25
E. Money spent per teacher for instructional services	196	266		
3. Teachers				
A. Number	195	227	214	213
B. Number grade 1-8	106	124		
C. Number grade 1-12	89	103		
D. Special education	[illegible]	1		
4. Principals				
A. Number	5	11		
B. Average Salary				
5. School Library				
A. Number of Books	33,221	53,831		
B. Value of Books, furniture, etc.	78,000	125,000		
C. Money spent for salaries, new books & supplies	23,400	32,000		
6. Money spent for operation of schools				
A. Grades 1-8	523,984	649,669		
B. Grades 9-12	406,627	517,837		

(CONTINUED)

	NEGRO	WHITE	If distribution was equal for both races: NEGRO	WHITE
6. Money spent for operation of schools (continued)				
C. per insfructor	4772	5104	4928	4928
D. For teaching materials & supplies	11,921	23,021		
E. Total money spent for instructional services	1,051,185	1,415,926		
7. Value of school property, buildings, sites and equipment				
School buildings	2,062,990	4,249,369		
B. Sites of schools	106,015	231,000		
C. Equipment in schools	215,000	455,500		
8. Sabbatical leave for teachers	1,900	6,840		
9. School buses				
A. Number of vehicles	12	26	19	19
* B. Number of students per vehicle	446	205	281	281
10. Students of college	83	153		

* based on all students- not just those who ride the buses

SEGREGATED SCHOOLS IN ORLEANS PARISH, LOUISIANA

	NEGRO	WHITE	If distribution was equal for both White & Negro NEGRO	WHITE
1. Number of schools				
2. Students				
A. Number	59,934	41,048		
B. Number grade 1-8	48,012	25,823		
C. Number grade 9-12	11,922	12,177		
D. Students per teacher	32	26	28	28
E. Money spent per student for instructional services	177	242		
3. Teachers				
A. Number	1986	1591	2277	1466
B. Number grade 1-8	1155	743		
C. Number grade 1-12	831	848		
D. Special Education	33	39		
4. Principals				
A. Number	57	63		
B. Average Salary				
5. School library				
A. Number of books	340,555	317,727		
B. Value of books, furniture, etc.	849,101	845,974		
C. Money spent for salaries, new books & supplies	147,270	158,316		
6, Money spent for operation of schools				
A. Grades 1-8	5,274,892	3,381,059		
B. Grades 9-12	4,067,198	4,263,848		

continued

	NEGRO	WHITE	If distribution was equal for both races: NEGRO	WHITE
6. Money spent for operation of schools (continued)				
C. Per instructor	4703	4805	4754	4754
D. For teaching materials & supplies	149,059	117,770		
E. Total money spent for instructional services	11,307,978	9,935,726		
7. Value of school property, buildings, sites and equipment				
A. School buildings	34,957,475	45,875,228		
B. Sites of schools	5,841,426	5,553,561		
C. Equipment in schools	3,713,278	4,791,545		
8. Sabbatical leave for teachers	52,721,	84,333		
9. School buses				
A. Number of vehicles	27	64	55	36
* B. Number of students per vehicle	2358	657	1151	1151
10. Students to college	681	1049		

* based on all students- not just those who ride the buses

SEGREGATED SCHOOLS IN OUACHITA PARISH, LOUISIANA

	NEGRO	WHITE	If distribution was equal for both White & Negro NEGRO	WHITE
1. Number of schools				
2. Students				
A. Number	4735	12,270		
B. Number grade 1-8	3771	8603		
C. Number grade 9-12	941	3562		
D. Students per teacher	31	26	27	27
E. Money spent per student for instructional services	191	232		
3. Teachers				
A. Number	155	480	175	454
B. Number grade 1-8	104	282		
C. Number grade 1-12	51	198		
D. Special Education	2	10		
4. Principals				
A. Number	12	23		
B. Average Salary				
5. School library				
A. Number of books	23,577	96,719		
B. Value of books, furniture, etc.	83,231	317,657		
C. Money spent for salaries, new books & supplies	42,964	104,612		
6. Money spent for operation of schools				
A. Grades 1-8	524,370	1,573,886		
B. Grades 9-12	254,744	858,260		

continued

	NEGRO	WHITE	If distribution was equal for both races: NEGRO	WHITE
6. Money spent for Operation of Schools (continued)				
C. Per Instructor	5027	5067	5047	5047
D. For teaching materials & Supplies	11,874	23,448		
E. Total money spent for instructional services	902,678	2,847,244		
7. Value of School Property, Buildings, Sites and Equipment				
A. School Buildings	2,831,760	11,973,467		
B. Sites of Schools	111,237	562,755		
C. Equipment in Schools	395,657	1,896,372		
8. Sabbatical Leave for teachers	none	8,232		
9. School buses				
A. Number of vehicles	27	119	41	106
* B. Number of students per vehicle	175	103	116	116
10. Students to college	45	270		

* Based on all students not just those who ride the buses

SEGREGATED SCHOOLS IN ST. HELENA PARISH, LOUISIANA

	NEGRO	WHITE	If distribution was equal for both White & Negro NEGRO	WHITE
1. Number of schools				
2. Students				
A. Number	1906	1018		
B. Number grade 1-8	1424	712		
C. Number grade 9-12	482	288		
D. Students per teacher	28	18	24	24
E. Money spent per student for instructional services	201	365		
3. Teachers				
A. Number	67	56	79	42
B. Number grade 1-8	46	28		
C. Number grade 1-12	21	28		
D. Special Education	0	3		
4. Principals				
A. Number	5	4		
B. Average Salary				
5. School library				
A. Number of books	8774	9,523		
B. Value of books, furniture, etc.	11,246	13,468		
C. Money spent for salaries, new books and supplies	6,424	12,390		
6. Money spent for operation of schools				
A. Grades 1-8	229,702	135,609		
B. Grades 9-12	103,744	159,399		

Continued

	NEGRO	WHITE	If distribution was equal for both races: NEGRO	WHITE
6. Money spent for operation of schools (continued)				
C. Per instructor	4977	5268	5123	5123
D. For teaching materials & supplies	1432	4788		
E. Total money spent for instructional services	383,948	371,872		
7. Value of school property, buildings, sites and equipment				
A. School buildings	421,211	992,468		
B. Sites of schools	8,616	21,371		
C. Equipment in schools	98,980	105,566		
8. Sabbatical leave for teachers	None	4,001		
9. School buses				
A. Number of vehicles	35	26	40	21
* B. Number of students per vehicle	54	39	48	48
10. Students to college	14	19		

* Based on all students-not just those who ride the buses

SEGREGATED SCHOOLS IN WASHINGTON PARISH, LOUISIANA

	NEGRO	WHITE	if distribution was equal for both White & Negro NEGRO	if distribution was equal for both White & Negro WHITE
1. Number of Schools				
2. Students				
A. Number	2786	3506		
B. Number grade 1-8	2137	2438		
C. Number grade 9-12	649	1068		
D. Students per teacher	28	22	24	24
E. Money spent per student for instructional services	199	282		
3. Teachers				
A. Number	98	160	116	149
B. Number grade 1-8	63	76		
C. Number grade 1-12	35	84		
D. Speical Education	0	1		
4. Principals				
A. Number	4	8		
B. Average salary				
5. School library				
A. Number of Books	10,247	25,488		
B. Value of books, furniture, etc.	26,486	56,938		
C. Money spent for salaries, new books & supplies	14,620	34,084		
6. Money spent for operation of schools				
A. Grades 1-8	297,131	394,877		
B. Grades 9-12	195,411	470,322		

Continued

	NEGRO	WHITE	If distribution was equal for both races: NEGRO	WHITE
6. Money spent for operation of schools (continued)				
C. Per instructor	5026	5407	5217	5217
D. For teaching materials & supplies	1545	4275		
E. total money spent for instructional services	553,375	988,793		
7. Value of school property, buildings, sites and equipment				
A. School buildings	547,484	1,986,863		
B. Sites of schools	27,006	61,240		
C. Equipment in schools	127,192	467,863		
8. Sabbatical leave for teachers	3,112	2,222		
9. School buses				
A. Number of vehicles	30	59	39	49
* B. Number of students per vehicle	93	59	71	71
10. Students to college	31	67		

* based on all student—not just those who ride the buses

SEGREGATED SCHOOLS IN WEBSTER PARISH, LOUISIANA

	NEGRO	WHITE	If distribution was equal for both White&Negro NEGRO	WHITE
1. Number of schools				
2. Students				
A. Number	4002	6977		
B. Number grade 1-8	2972	4848		
C. Number grade 9-12	1008	2096		
D. Students per teacher	27	23	25	25
E. Money spent per student for instructional services	208	256		
3. Teachers				
A. Number	150	297	160	297
B. Number grade 1-8	99	183		
C. Number grade 1-12	51	114		
D. Soccial Education	2	3		
4. Principals				
A. Number	10	15		
B. Average Salary				
5. School library				
A. Number of books	38,691	66,801		
B. Value of books, furniture, etc.	87,900	158,954		
C. Money spent for salaries, new books & supplies	62,236	96,453		
6. Money spent for operation of schools				
A. Grades 1-8	497,212	925,967		
B. Grades 9-12	250,532	585,863		

Continued

	NEGRO	WHITE	If distribution was equal for both races: NEGRO	WHITE
6. Money spent for operation of schools (continued)				
C. Per instructor	4985	5090	5038	5038
D. For teaching materials & supplies	10,949	32,551		
E. Total money spent for instructional services	833,094	1,784,946		
7. Value of School property, buildings, sites and equipment				
A. School buildings	1,833,800	6,174,550		
B. Sites of schools	37,500	55,000		
C. Equipment in schools	415,914	722,301		
8. Sabbatical leave for teachers	6,542	5,568		
9. School buses				
A. Number of vehicles	27	52	29	50
* B. Number of students per vehicle	148	134	139	139
10. Students to college	56	200		

* based on all students-not just those who ride the buses

SEGREGATED SCHOOLS IN WEST FELICIANA PARISH, LOUISIANA

	NEGRO	WHITE	If distribution was equal for both White & Negro: NEGRO	If distribution was equal for both White & Negro: WHITE
1. Number of schools				
2. Students				
A. Number	2107	816		
B. Number grade 1-8	1599	612		
C. Number grade 9-12	508	204		
D. Students per teacher	31	23	28	28
E. Money spent per student for instructional services	171	249		
3. Teachers				
A. Number	67	36	75	21
B. Number grade 1-8	49	17		
C. Number grade 1-12	18	19		
D. Special Education	0	0		
4. Principals				
A. Number	2	2		
B. Average Salary				
5. School library				
A. Number of books	3448	5182		
B. Value of books, furniture, etc.	8910	11,500		
C. Money spent for salaries, new books & supplies	6996	7364		
6. Money spent for operation of schools				
Grades 1-8	199,229	73,531		
B. Grades 9-12	131,487	93,781		

continued

	NEGRO	WHITE	If distribution was equal for both races: NEGRO	WHITE
6. Money spent for operation of schools (continued)				
C. Per instructor	4936	4648	4792	4792
D. For teaching materials & supplies	1220	3209		
E. Total money spent for instructional services	360,850	202,887		
7. Value of school property, buildings, sites and equipment				
A. School buildings	780,150	875,480		
B. Sites of schools	42,492	16,794		
C, Equipment in schools	67,413	85,074		
8. Sabbatical leave for teachers	None	3,600		
9. School buses				
A. Number of vehicles	15	12	20	8
* B. Number of students per vehicle	140	68	108	108
10. Students to college	13	26		

* based on all students- not just those who ride the buses

SEGREGATED SCHOOLS IN WEST CARROLL PARISH, LOUISIANA

	NEGRO	WHITE	If distribution was equal for both White & Negro: NEGRO	If distribution was equal for both White & Negro: WHITE
1. Number of schools				
2. Students				
A. Number	1086	3141		
B. Number grade 1-8	879	2236		
C. Number grade 9-12	207	868		
D. Students per teacher	31	22	24	24
E. Money spent per student for instructional services	172	279		
3. Teachers				
A. Number	35	140	46	131
B. Number grade 1-8	21	84		
C. Number grade 1-12	14	56		
D. Special Education	0	3		
4. Principals				
A. Number	2	7		
B. Average Salary				
5. School library				
A. Number of books	6996	30,143		
B. Value of books, furniture, etc.	18,371	85,590		
C. Money spent for salaries, new books & supplies	9,024	29,849		
6. Money spent for operation of schools				
A. Grades 1-8	104,689	433,150		
B. Grades 9-12	64,350	329,483		

continued

	NEGRO	WHITE	If distribution was equal for both races: NEGRO	WHITE
6. Money spent for operation of schools (continued)				
C. Per instructor	4830	5447	5139	5139
D. For teaching materials & supplies	1750	13,217		
E. Total money spent for instructional services	187,534	875,606		
7. Value of school property, buildings, sites and equipment				
A. School buildings	495,522	2,186,364		
B. Sites of schools	2,806	7,500		
C. Equipment in schools	100,102	301,039		
8. Sabbatical leave for teachers	None	2,289		
9. School buses				
A. Number of vehicles	11	39	13	37
* B. Number of students per vehicle	99	81	85	85
10. Students to college	5	57		

* based on all students - not just those who ride the buses

512 South 16 Street
Monroe, Louisiana
Phone 322 322-8843

I, ALICE MAE MILLER, do hereby retain the lawfirm of COLLINS, DOUGLAS AND ELLIS, 2211 Dryade St., New Orleans, Louisiana, Alvin J. Bronstein, 603 No. Parish St., Jackson, Mississippi, and any other attorney associated with them or any authorized representative of theirs, to represent me in any suit or other matters which may arise in connection with the City of Monroe School Bond Issue.

Further, I express my desire to be included as an additional plaintiff in the case of JIMMY ANDREWS Et al vs. CITY OF MONROE, et al, Civil Action No. 11297 in the United States District Court for the Western District of Louisiana.

I sign this retainer for myself and also as mother and natural guardian of my son ROMALANE MILLER, a minor.

Dated at Monroe, Louisiana this 23rd day of August, 1965.

Alice Mae Miller
ALICE MAE MILLER, INDIVIDUALLY AND
AS MOTHER AND NATURAL GUARDIAN OF
HER SON ROMALANE MILLER, A MINOR

Witnesses:
Miss Leigh Lorna McCoy - 2316 Wood St.
Dr Lawrence Davis - 1306 Olive St

I, ETTA MAE ANDREWS, do hereby reaffirm my retention of Collins, Douglas, and Ellis, 2211 Dryads St., New Orleans, Louisiana, Alvin J. Bronstein, 603 N. Parish St., Jackson, Mississippi, and any other attorney associated with them or any authorized representative of theirs, to represent me in any suit or other matters which may arise in connection with the City of Monroe School Bond Issue. I first retained the above attorneys with a signed retainer agreement dated August 3, 1965.

Specifically, I reaffirm my intention of having the above attorneys continue to represent me in the following action in the United States District Court, Western District of Louisiana:

JIMMY ANDREWS BY HIS MOTHER
AND NEXT FRIEND, ETTA MAE ANDREWS: et. al.

Plaintiffs

vs.

CITY OF MONROE, LOUISIANA, et. al.

Defendants.

CIVIL ACTION NO. 11297

I do not wish to have the suit withdrawn.

Signed: Mrs. Etta Mae Andrews
Etta Mae Andrews
912 S. 18th Street
Monroe, Louisiana

Witnesses: _____ _____

Address: _____ _____

_____ _____

_____ _____

Dated: _____

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS 25 DAY OF AUGUST, 1965.

NOTARY PUBLIC

THE FOLLOWING PAGE(S) ARE THE BEST AVAILABLE.

(1)

Andrews
v. City of Monroe

Monroe Louisiana
August 22, 1965

I Am Mrs Etta Mae Andrews, I live At 915 South 18th Monroe, La my phone No is 325578. I had filed suit in favor of my son Jimmy Andrews early this month against the Monroe City School Board & Mayor of the said City, but I now obtained as My Attorneys the L C & C to represent My Son Jimmy and me in this civil suit.

On Wednesday night of last week (August 18th) Mrs Bell Willis called me to come to her house and go to the Conway Memorial Hosp. to visit Mrs. Viola Turner who was very sick at that moment (6:10 P.M.) I went over to Mrs. Willis house in the hope of going to the hospital then coming back and going to West Monroe, La. to my Brother house for a visit to help plan a funeral for my Aunt who had passed away on Tuesday August 17th 1965. Mrs. Willis was

supposed to have gotten us a ride
with somebody, We waited until
around 7.30 P.M. for the ride to come
which it never got there. As I was
about to leave the phone along and
Mrs. Willis around, she talked for
about 30 min, I do not know what
the conversation was about Nor at
that time who the caller was after
about 30 min - or more of talk, I heard
her say she is at my house do you
want to talk to her and she called me
to the phone, I was outside sitting
on her front porch trying to think
who to call to take me to my Uncle's in
West Monroe, La. when she said telephone
I got up went inside, as I reached for
the phone with an odd expression on
my face as to say who could be calling
me at her house for no one knew I
was there she said "Mr. Edwards
wants to talk to you. Now I had the
phone in my hand I said hello Mr.
Edwards who is the Supervisor of
Manage. Citys Schools (Negro) said
Mrs. Andrews I would like to talk
to you and Mrs. Willis Coming a

very important issue it will not take
but about 30 min, I said to him I don't
have time to talk my Aunt has died
and I am waiting for a bill so I can
help make the funeral arrangements
he said where are you going to do this
at." I said West Monroe, La. he said
I will carry you I said No I had a girl
friend who I had called to pick me up.
he said cancel the call and I and my
wife will take you and we can talk
in the ~~car~~ car. I said I will have
to call you back. He gave me his number
Mrs. Willis wrote it down as I repeated
it. I hung the phone up with no intention
of calling him, and said to Mrs Willis
I don't know what he is talking about.
all this time she had not commented on
nothing that I had said, but in my mind
I was wondering why he called her and
talked to her. I was getting ready to leave
her house and come to my house, leaving
his phone No. there because I was not going
to call him, the phone rang again and
Mrs. Willis answered it, he (Mr Shwab)
was on the phone again he asked for
me and he insisted that we let him

Pick us up. I Asked Mrs. Wyllie if she wanted
to go she said yes. Mr. Edwards and his wife
picked us up we went to ~~[illegible]~~ their home
we were seated in the den with the door shut.
He said lets talk about the hood issue and
about how many children would go school
less Unless they could get the money to
operate the schools. His Wife talked about
how ~~[illegible]~~ poor Negro Children. Are and how if
desegnation Come it probly would not
be but one student ~~[illegible]~~ from here. Mr. Edwards
wanted to know what was wrong with
Cornell's I said a lots of things happened
~~[illegible]~~ Neville and if Kids wanted to go to
Neville I thought they should be allowed to
At this point he told Mrs. Will that
he knew a lot of thing about her husband
and Conduct such as fighting and lying
Mean, she (Mrs. Wills) ~~[illegible]~~ there and ~~[illegible]~~
laughs and tell them about some of the
things she had done in the Pass, after
which he says the people are really to
talk and do business with you all I can
arrange for a meeting in the morning.
in the meantime before this happend
he (Mr Edwards) went out of the room
for about 20 or 25 min. While his wife

V

talked about dead in general when he
come back he said I went to the
Kitchen to get coke but there weren't
any Mrs Willis asked to talk to the
people in the morning so did I at that
time he said you don't have to make
any decision just talk. Just let the
Mr. Edwards bought us home with
this statement "these people are redy
to do business with you all. At the
time he said this I was pretty tired
and upset of not going to help make
the funeral arrangements for my aunt
I didn't understand exactly what he
ment. On [redacted] August 14th at
7.15 a.m. Mrs. Willis called and said Mr.
Edwards was at her house. I walked out
of my house they Mr. Edwards and Mrs Willis
picked me upon the corner we drove
to the school board office on Cleveland
7:30 a.m.
we went in to the outer office no one
was there at the time we went into another
office there was a man there whom Mr. Edwards
introduced us to as a Mr. Patterson he said
how do to me and then he said I already
know Mrs. Willis. we set down in
chairs and he said let's talk. What are

Wyer
some of the Greatness of the Cornell High School. We exchanged a few thoughts on the shortage of books up to date Class room science and Chemistry labs. then Mr Patterson said let get down to business. "You people have got me on the hook and unless you sign the release on the suit I will be into it" Mrs Wells said she was willing to sign be cause she didnt want integration Neighbors did her son had beside that she was tired of the publicity because she had to think about her sick mother. I said I will have to talk to my lawyer first and will let you know later. Mr. Patterson said I will have to know before 12 o'clock as to day is the dead line and the lawyers will be in New Orleans at that time. I said how are you going to take papers to New Orleans that late? Mr. Patterson said I have a friend who will fly me there All I want is for you to sign the release on the school issue suit. I asked if that would have any effect on the desegregation suit he said he didnt know at that time Mr. & Mrs Wells said when Jimmie Gray gets out and find out what he wants to do if money

was a problem ask him for it and he would help him out. I still said I had to call my lawyer and that I was due at work at 8:30 a.m. so I had to go it was about 8 o'clock we left with Mr. Edward saying we to work I arrived in my job at 8:35 a.m. mention Mr. Edwards had given me a number that was at the Social Security Office to call him back when I called to my lawyer I never looked at the number because I was not going to call it any way at 9:30 Mr. Edward called on my job and asked had I made my call I said no and I would call him when I did. he wanted to pick me up and we go sign the papers thats why he gave me the number to call him back. I still refused to call. It was very difficult for him calling me on my job on the business phone as I am not allowed personal conversation on that line I had my own line in the lock. He called again about 20 min to 10 and said he thought it would be better for them to bring the papers to me, at this point I am very uneasy trying to get all my work done and my boss was here

sick from a heart condition and with the phone ringing every 25 or 30 min I knew he did not like that, neither was it good for his health. I must say he was willing. Mr Edwards said it would take about 5 min. At most. He and Mr Edwards and Mr Patterson. Some after the trial was I went out and working as possible so that Ms Davis could not see me Nor say anything to me. Mr Edwards said get in and Mrs Patterson said these are the papers. It won't take but about 5 min. He handed the papers to me and said you don't have to read them they are all alike, they are just saying that you are with drawing the suit. I took the pen & papers and started signing my name not even looking at the writting at this time I had become very upset with him for calling on my job. I have not with drawn the suit or I am willing and ready to file another. I want to go on with the original suit.

I Lotta Mae Andrews have written by my own hand the statements on these pages and fully and clearly understands them. This statement was written by

Me in my own hand writing at my
stance on Sunday August 22 1965
P.S. I forgot to include in this statement
on the front page that in every conversation.
(they) Mr Patterson and Mr Edwards
would say "this is off the record," don't
mention my name." I forget to include
this conversation in the phone statement
While we were at Mr. Edward house his
wife accidently said this," these people
are depending on you to let them off the
hook, you may as well go ahead and
do it while you can get something out
of it." At the time this did not ring a
bell to me and Mrs. Ellis did not
say any thing.

Mrs. Etta Mae Andrews

STATE OF LOUISIANA)
:
PARISH OF OUACHITA)

BEFORE ME, the undersigned authority, personally came and appeared mrs. ETTA MAE ANDREWS, who after having been first duly sworn, did depose and say: That she has written and signed the above statement and to the best of her knowledge is true and correct.

Mrs Etta Mae Andrews

SWORN TO AND SUBSCRIBED
BEFORE ME ON THIS 23
DAY OF AUGUST, 1965.,

Edgar D. Thomas
NOTARY PUBLIC

February 3, 1966

William Q. Keenan
c/o R.E.A. Express
219 East 42nd Street
New York, N.Y.

Re: Louisiana School Cases

Dear Bill:

I hope you will remember our conversation of last December in which I asked you (and you agreed) to write the brief in the above-mentioned cases. The three cases are being merged for purposes of argument and, fortunately, only one brief will be necessary.

I sincerely regret having failed to forward the material to you at an earlier date. It took quite a while to duplicate all of the things which I have enclosed; primarily because our duplicating machine kept breaking down. In addition I was sent down to Tallahassee for several weeks and many matters including this one, were held in abeyance while I was away.

We still have about something over a month in which to submit the brief. I hope that you are still interested, and that you will still be able to do the job. If there is any information which you will require which is not enclosed, please let me know.

Once again let me apoligize for the delay, and thank you for you patience.

Cordially,

Stephen M. Nagler

La school cases

April 19, 1966

Harris David, Esq.
Douglas, Collins & Elie
2211 Dryades Street
New Orleans, Louisiana

Dear Harris:

I understand that our school cases are on for argument at the end of May. We have not as yet received anything that even closely resembles a record. You know, of course, without a record we can not possibly complete the brief.

I understood that the record was to be printed by the Fifth Circuit with a bill sent to us. We haven't heard anything from the Fifth Circuit yet. Are they going to print the record? Have they done so far already?

Specifically, which of our cases have been consolidated with other cases inwhich the Government is involved? Please let me know as soon as possible what is happening.

Sincerely,

SMN:tp
cc: William Quinan

Stephen M. Nagler
Associate to the General Counsel

La schools

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

April 25, 1966

Messrs. Nils R. Douglas and
Harris Davis
Attorneys at Law
2211 Dryades Street
New Orleans, Louisiana

Re: No. 23173 - Margaret M. Johnson, et al
-vs- Jackson Parish School Board, et al
No. 23192 - Yvornia Decarol Banks, et al
-vs- Claiborne Parish School Board, et al.
No. 23253 - Jimmy Andrews, et al
-vs- City of Monroe, Louisiana, et al

Gentlemen:

This is to advise that your alternative motion for permission to file typewritten briefs on May 2, 1966 with printed copies to be filed by May 5, 1966 has this date been granted.

Very truly yours,

Edward W. Wadsworth

EDWARD W. WADSWORTH,
Clerk

/bwc
cc: Mr. Carl Rachlin
Mr. Alvin Bronstein
Mr. Fred L. Jackson
Mr. William H. Baker
Hon. Jack P. F. Gremillion
Mr. William F. Pipes, Jr.
Mr. Albin P. Lassiter
Mr. Harold B.Judell

CONGRESS OF RACIAL EQUALITY
CORE
38 PARK ROW
NEW YORK 38, NEW YORK
COrtlandt 7-6270
James Farmer
national director

Sa
Schools

Oct 7, 1966

This is what our
Next report on the schools
will look like. If you
have any suggestion
to improve it please make
them now.

She

Carl

SUMMARY OF STATISTICS

WEST FELICIANA PARISH SCHOOLS

Source: Annual Reports of the Louisiana State Board of Education.

Note: Whenever the phrase "per student" is used, it signifies and is the same as the phrase "per student of that race initially registered." Whenever the phrase "per teacher" is used, it signifies and is the same as "per teacher of that race employed."

I. SCHOOL REGISTRATION STATISTICS, GRADES 1-8

	1962-1963	1963-1964	1963-1964
White:	608	612	639
Negro:	1,577	1,599	1,572

II. SCHOOL REGISTRATION STATISTICS, GRADES 9-12

	1962-1963	1963-1964	1964-1965
White:	202	204	222
Negro:	465	508	514

III. TOTAL STUDENTS REGISTERED

	1962-1963	1963-1964	1964-1965
White:	810	816	861
Negro:	2,042	2,107	2,086

IV. ELEMENTARY TEACHERS (REGULAR)

	1962-1963		1963-1964		1964-1965	
	Total	Students Per Teacher	Total	Students Per Teacher	Total	Students Per Teacher
White:	17	35.76	17	36.00	17	37.59
Negro:	49	32.18	49	32.63	38	41.37

Page Two of Summary.

V. SECONDARY TEACHERS (REGULAR)

	1962-1963 Total	1962-1963 Students Per Teacher	1963-1964 Total	1963-1964 Students Per Teacher	1964-1965 Total	1964-1965 Students Per Teacher
White:	18	11.22	19	10.74	21	10.57
Negro:	16	29.06	18	28.2	30	17.13

VI. EXPENDITURES FOR INSTRUCTIONAL PERSONNEL (SECONDARY)

	1962-1963 Total	1962-1963 Per Student	1963-1964 Total	1963-1964 Per Student	1964-1965 Total	1964-1965 Per Student
White:	$79,530.61	$393.72	$93,781.11	$459.71	$111,590.00	$502.66
Negro:	75,766.63	162.94	131,487.322	258.83	151,881.23	295.49

VII. TOTAL EXPENDITURES FOR INSTRUCTIONAL SERVICES

	1962-1963 Total	1962-1963 Per Student	1963-1964 Total	1963-1964 Per Student	1964-1965 Total	1964-1965 Per Student
White:	$179,076.44	$221.08	$202,887.10	$248.64	$226,118.67	$262.62
Negro:	305,850.19	149.78	360,849.58	171.26	396,910.28	190.27

VIII. VALUES OF SCHOOL BUILDINGS

	1962-1963 Total	1962-1963 Per Student	1963-1964 Total	1963-1964 Per Student	1964-1965 Total	1964-1965 Per Student
White:	$875,480.00	$1,080.84	$875,480.00	$1,072.89	$911,430.00	$1,058.57
Negro:	494,250.00	242.04	780,150.00	370.27	779,400.00	373.63

IX. COST OF EQUIPMENT

	1962-1963 Total	1962-1963 Per Student	1963-1964 Total	1963-1964 Per Student	1964-1965 Total	1964-1965 Per Student
White:	$82,343.15	$101.66	$85,074.23	$104.26	$92,018.50	$106.87
Negro:	56,895.48	27.86	67,412.64	31.99	80,921.64	38.79

X. NET BOOKS IN SCHOOL LIBRARIES

	1962-1963 Total	1962-1963 Per Student	1963-1964 Total	1963-1964 Per Student	1964-1965 Total	1964-1965 Per Student
White:	5,368	6.63	5,182	6.35	5,050	5.87
Negro:	3,890	1.90	3,448	1.64	3,460	1.66

XI. BOOKS ADDED TO SCHOOL LIBRARIES DURING THE SCHOOL YEAR

	1962-1963		1963-1964		1964-1965	
	Total	Per Student	Total	Per Student	Total	Per Student
White:	430	.531	483	.592	581	.675
Negro:	386	.189	308	.146	797	.382

XII. VALUE OF BOOKS, FURNITURE, FIXTURES, ETC., IN SCHOOL LIBRARIES

	1962-1963		1963-1964		1964-1965	
	Total	Per Student	Total	Per Student	Total	Per Student
White:	$11,234.87	$13.87	$11,500.00	$14.09	$11,401.75	$13.24
Negro:	5,505.00	2.70	8,809.87	4.18	9,328.67	4.47

XIII. SCHOOL TRANSPORTATION

	1962-1963		1963-1964		1964-1965	
	Total Vehicles	Students Per Vehicle	Total Vehicles	Students Per Vehicle	Total Vehicles	Students Per Vehicle
White:	11	73.6	12	68.0	13	66.2
Negro:	11	185.6	15	140.5	17	122.7

Louisiana
School Cases

POINTS

Other side contending steps court may take to end the dual school system which is a constitutional question with the statutory question of whether busing can be required to achieve racial overcoming racial imbalance

The issue here is not racial imbalance, but the continued maintenance of the dual school system which is unconstitutional.

The ~~the~~ ~~the~~ evidence that it is maintained is in the facts of what has happened

We point to the reality in order to show that the dual school system still continues

Jan
6 1966
28 pp
Hand N
N-2

Satterfield

Basic problem - reconcile educational principles - will they be varied in order to carry out certain psychological & sociological ideas

Every child should receive these fundamental rights -

There must be cooperation between judicial & jn'l

1 - Judi must maintain const'l hts

2 - Rl of Congress & limited use of fed funds

But cooperation is very important

Start

children voluntarily then in

Guidelines do not take this into acc't - a question of geographic location

Removal of effect of past discriminating — but effect of it under conditions is not so serious — it is not what a student would do if past history had been different.

Freedom of choice plans approved by this and other courts —

If found as applied free choice is not.

Still that it would be remove all forms of segregation — even voluntary, but only compulsory

Gov.

Endorsed

1. No percentages students, parents have free choice

2 — Geographic zones no relation to race.

Not force children to
go to school on the basis
of race
This is a total HELL in
point of view of want
This is unconst'l

Students will be assigned
on basis of race
Boundaries will be designed
on the race
to obtain balance

Princeton plan - opposed to
it

Faculty desegregation
Clark case - 8th cir
(Little Rock case)

Guidelines + 1964 Act

What did Congress do?
heard of Guidelines - compulsory
assignment of pupils

Compulsory assignment
Pupils normal

§ 410 - classification other than race etc. is OK

Desegr'n - shall not mean assignment for the purpose of securing racial balance

Duty is to remove state bar from schools

Atty Gen'l Rep'l 1 K
p 7869 opinion of Cong'l Bd
April '64

Fed Gov't in control over human forms of teachers

Bell will not force transfer of students from school to another

Local authorities will remain in control of schools

They have lost every vestige of control - dissent KR

Desegregation ~~[illegible]~~ shall not mean disregard of pupils race or racial imbalance

HARD

Fourteenth
Bds not her clause of Constitution
1964 Act – Civil Rights
14th amendment.

What was 14th amend'd designed to do

Applied only to state action
not to private action.
Jury cases – tryst to state action or private action
imbued with state action.

Brown – must be made available to all on equal terms – enforced segregation is ended

Plessy

Clark case

Capers v. Harris

Pierce v. Lassan & Grand

Perhaps

(1) Faculty desegregation — not opposed to faculty desegr.

Fund back for taking of testimony

(2) 14th amend it imposes a duty to integrate — p's + plaintiffs

Contract cases

dicta in Briggs Case

Compulsory integration is wrong - deals with prin division of that Ct.

Wisdom ~~supports~~ v. Prince Edward County

Reed B Barnes

Schuler -

achieve substantial integration - by

Rozalura
Campbell Soup

Special Service Office in church

(1) Can CAT employees
file NLRB for an
election?

2 Declaratory Judgment
proceeding

355-5600
ext 440

LOUISIANA VOTER REGISTRATION CASES

Box 45
Folder 18

Please Retain Original Order

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

REVEREND A. L. DAVIS, EARLINE NEALEY AND CALEB HADLEY, AND ALL NEGROES SIMILARLY SITUATED,

Plaintiffs

VS

CIVIL ACTION # 15910

A. P. GALLINGHOUSE, REGISTRAR OF VOTERS OF THE PARISH OF ORLEANS, STATE OF LOUISIANA; HONORABLE JOHN J. McKEITHEN, GOVERNOR OF LOUISIANA; AND THE BOARD OF REGISTRATION OF THE STATE OF LOUISIANA, COMPRISED OF HONORABLE JOHN J. McKEITHEN, GOVERNOR OF LOUISIANA, VAIL M. DELONY, SPEAKER OF THE LOUISIANA HOUSE OF REPRESENTATIVES, AND C. C. "TADDY" AYCOCK, LIEUTENANT GOVERNOR OF THE STATE OF LOUISIANA

DIVISION B

Defendants

Robert F. Collins, Collins, Douglas & Elie, New Orleans, Louisiana
James M. Shellow, Shellow and Shellow, Milwaukee, Wisconsin
Earl J. Amedee, New Orleans, Louisiana
John M. Darrah, Seattle, Washington

For Plaintiffs

Sidney W. Provensal, Jr.,Cahn & Provensal, New Orleans, Louisiana; Joseph A. Laura, New Orleans, Louisiana, for defendant, A. P. Gallinghouse

William P. Schuler, Assistant Attorney General, for Defendants Honorable John J. McKeithen and the Board of Registration of the State of Louisiana

ELLIS, FRANK B. - Judge

On August 6, 1965, the President signed into law the Voting Rights Act of 1965 (Public Law 89-110). On August 11, 1965, A. P. (Tim) Gallinghouse, Registrar of Voters of Orleans Parish (hereinafter sometimes referred to as the "Registrar") announced that his office would begin complying with the Voting Rights Act; at the same time he filed suit challenging the constitutionality of that act.[1]

In the present suit, filed August 31, 1965, plaintiffs, allegedly representing all Negroes qualified to register to vote in Orleans Parish, level a shotgun complaint at the defendants, Gallinghouse, Governor John J. McKeithen, and the members of the State

Board of Registration. Trial of the matter was held September 9, 13, 14 and 15, 1965. The court dismissed Governor McKeithen from the suit in his capacity as Governor, while retaining the Registration Board, one of whose members is the Governor.[2]

The background circumstances giving rise to the present suit are as follows: subsequent to the passage of the Voting Rights Act, large numbers of prospective registrants appeared at the Registration Office and formed long lines waiting to get into the office. Because of the requirement that registrants document identity and residence, members of the Interdenominational Ministerial Alliance patrolled the lines checking the documents of prospective registrants to see if they were in order. If not in order, the ministers would send the registrant home to get the proper papers, saving his place in line so that when he returned he would not have to wait in line again. If a person entered the Registrar's Office and there was told that his documents were not in order, he, after returning from home with the proper documents, would be escorted into the office ahead of the line, thus causing him no further delay.

Sifting through plaintiffs' allegations, proof and argument, these main charges emerge:

I. That the Registrar has, in the application of the rules of his office concerning identification and proof of residence, discriminated against Negroes;

II. That the Registrar has, even if on a non-discriminatory basis, deliberately slowed down the registration process, thereby discouraging prospective Negro registrants, by demanding unlawful and unreasonable proof of residence and engaging in other slow-down practices;

III. That even if present registration requirements are lawful and non-discriminatorily applied, these requirements, which the Registrar initiated early in his tenure of office, differ from the requirements in

effect in earlier years when discrimination against Negroes was practiced and thereby must be struck down under the "freeze-out" doctrine approved in United States v. Louisiana, 380 U. S. 145 (1965).

I. DISCRIMINATION

As to the first charge, there is simply no proof in the record of discriminatory application of the registration requirements. Plainciffs made many grave charges, but did not offer the proof to support them.[3] The complaint alleges discrimination since August 11, 1965. The Court is well aware that, in the past, there was discrimination against Negroes in the registration process. But plaintiffs' present suit needs more than an ipse dixit to prevail. Orleans Parish is not one in which the statistics of voter registration alone demand a finding of discrimination.[4] The registration figures since August 11, 1965, are as follows:

August 11 to September 7 (start of this trial)

	Literates	Illiterates		Total
Whites	579	28	607	607
Negroes	5317	1442	1742	6759
	5896	1470	2349	7366

August 11 to September 24[5]

	Literates	Illiterates		Total
Whites	1738	54	10,428	1792
Negroes	8353	2075	6759	10428
	10,091	2129	17,187	12,220

Since the statistics do not indicate discrimination there must be some other form of substantial proof made. In finding that there has been no discrimination against Negroes in the registration process since August 11, 1965, this Court does not feel it is shutting its eyes "to what all others than we can see and understand,"[6] but rather is making an analytic finding in accord with reality and the evidence.

There was no evidence introduced into the record of the total number of people turned away for lack of adequate documentation of residency. The fact that the Registrar's Office does not keep such records does not relieve plaintiffs of the burden of producing testimony from those who were allegedly turned away. The ministers in the hall would have been aware of any such people, and plaintiffs' counsel could readily have produced them.

The proof is that both whites and Negroes would be sent away if documentation was inadequate. There was testimony from one Negro man indicating he may have had adequate documents and was turned away. Four days of trial elicited only this single illustration of one possibly qualified Negro who was not accepted. Where there is a general policy for all, Negro and white, then there is no discrimination because of race where there are isolated cases of people who do not receive identical treatment.[7] In fact, plaintiffs' own witness, a Negro minister who checked the documents of prospective registrants in the hall, testified that the Registrar's office was operated on a non-discriminatory basis.[8]

Plaintiffs contend that because a flexible standard as to what constitutes sufficient documentation of residence is used, discrimination can be practiced under the guise of applying the standard. But the standard here is not a patently objectionable one, such as a "constitutional interpretation" test and, although flexible standards, fair on their face, have been struck down in other cases because of discrimination worked, or workable, under them,[9] there has here been no showing that the residency documentation requirement has been used unfairly. The Board of Registrars circulated a suggested list of documents that may be used to properly support residence.[10] The Registrar modified that list and adopted instead a generally less strict standard. He requires only that a registrant document that he resided at the address at which he desires to register more than 90 days prior to the date of registration.[11] The standard for proper documentation may be stated as a document

or group of documents created by some person or agency other than the registrant, for some purpose other than demonstrating that registration requirements are met, bearing a date at least 90 days old but not so stale as to cast doubt as to why something more recent could not be obtained, showing the name and address claimed. The flexibility arises from the discretion given the deputy registrars to determine whether a document meets that standard. They do not have an arbitrary power to give or withhold consent, but merely a discretion to be exercised upon a consideration of the circumstances of each case.[12]

Plaintiffs admit that a rigid standard, requiring certain specific documents, could work a hardship on some members of their class, who might not have a specific document, such as a driver's license. The standard used is not an onerous procedural requirement to effectively handicap exercise of the franchise by the colored race,[13] but is made easy for them to meet.[14]

For this reason the Court feels that the present standard should be upheld, provided it is applied fairly. And the evidence shows that it was applied fairly. If the deputy registrar decides that the proferred documents are inadequate, the registrant is referred to one of the deputy's supervisors, Mr. George Bull, and Mr. Bull decides as to the sufficiency of the documents. Of Mr. Bull's handling of the problems, one of the plaintiffs' witnesses had this to say[15]:

"Q And I take it from your testimony that you believe that Mr. Bull in that position has corrected mistakes made by deputy registrars, and has permitted people to vote -- I mean to register to vote?

"A Yes, sir.

"Q No, isn't that basically what you discussed with Mr. Gallinghouse on your first visit with him where you asked that when persons were turned down that there be a sort of an appeal permitted to a so-called higher

authority?

"A We didn't ask this; this is what was told us, that if we found any problems in regard to this, that we could bring the people in to him and he would see that the matter was corrected.

"Q Isn't it a matter of fact that this has been done through the offices of Mr. Ball?

"A Mr. Bull has been doing that essentially, yes.

"Q He has been doing that essentially?

"A Essentially, yes.

"Q And, generally, don't you believe Mr. Bull has handled that, has handled his decisions in a non-discriminatory and fair manner?

"A Yes. I stated earlier as far as Mr. Bull's work and so forth, I mean, this is quite all right. Oh, no, I have nothing to say against Mr. Bull and his activities at all -- no.

. . .

"Q In other words, most persons that are turned down are brought to Mr. Bull, and it is further your testimony that Mr. Bull has administered and used his discretion in a wise, fair and equitable manner? Is that correct?

"A I don't accuse Mr. Bull of discrimination; no, sir."

The Court finds no support for the charge that the requirement of documentation of residence is being applied in a discriminatory fashion.

In connection with the charge of discrimination, one other contention is made. In Orleans Parish, as well as in the rest of Louisiana and much of the South, there exists, especially on the local level, a virtual one-party system, so that "nomination is tantamount to election". In most instances, then, an effective ballot is cast only if the elector votes in the Democratic primary. And to vote in a party primary, an elector must declare his affiliation with that

party.[16] The contention is made, with regard to the illiterate Negroes who have been allowed to register since the passage of the Voting Rights Act,[17] that they are being duped into affiliating with some party other than the Democratic one. The registration form has a line on which the registrant can choose as his affiliation "Democrat", "Republican", "States Rights", "None", or "Other". The charge is that against the express response of the applicants or without having asked them, deputy registrars have marked something other than "Democrat", usually "States Rights", or have left the question blank, and thereby effectively disenfranchised the registrants.

There was offered two types of proof for this point, first, testimony of three witnesses, and second, the tabulation of the choices of party affiliation made by both illiterate and literate Negroes.

The testimony of the witnesses is unconvincing. On cross-examination and questioning by the Court, the witnesses testified that they did not know what a political party is, and were very hesitant and unsure about what had happened in the Registrar's office and about the names of various parties. Under cross-examination one witness stated that she was for "States Rights". Yet all were sure they said, or would have said, "Democrat".

The study of the registration records as to choice of party affiliation showed that the registrants made the following choices; the table also expresses the number of registrants making a particular choice as a per cent (rounded to the nearest whole number) of the total of that class registered in the period in question.

	Total	Democrat[18]	Republican	States Rights	None	Other	Left Blank
Literate Negroes	5317	4015 - 76%	57 - 1%	46 - 1%	121 - 2%	3 - 0%	1075 - 20%
Illiterate Negroes	1442	939 - 65%	77 - 5%	61 - 4%	183 - 13%	1 - 0%	181 - 13%
Whites	607	594 - 98%	6 - 1%	0 - 0%	5 - 1%	0 - 0%	2 - 0%

The tabulation is inconclusive. Plaintiffs' counsel contends it shows that illiterate Negroes were duped; on the contrary, just as valid an assumption is that the illiterates are not as intelligent or conversant with political affairs as the literates, and, thereby, a higher percentage made the "wrong" choice by affiliating with the "rights" party. Almost one-fourth of the literate Negroes did not choose "Democrat"; the fact that 35% of the illiterates did likewise is not conclusive. At most, the tabulation alerts the Court to possible injustice, but without a credible showing that those whose cards indicate they did not choose "Democrat" were either not asked the question or expressed some other preference, the Court cannot find that injustice was done. A ruse such as that alleged would be an insidious method for disenfranchising illiterates, and the Court would be quick to strike it down. But the tabulation and the inherently self-contradictory testimony of the witnesses does not outweigh the testimony of the Registrar and deputy registrar, who appeared candid and sincere to the Court.

In connection with this, plaintiffs' counsel makes much of the fact that the questions were left blank on many of the illiterates' cards. A deputy registrar testified that she left it blank rather than circling "None" when the applicant showed no comprehension or interest in the question. The court fails to see any practical difference between a blank and "None" despite the urging of plaintiffs' counsel that a blank is many times more terrible an injustice.

Collateral to the above findings, the court does not feel it is the duty of a deputy registrar, confronted by an illiterate who does not comprehend the meaning of "political party" and who does not realize that, in most instances, he will cast an effective ballot only if he affiliates with the Democratic Party, to go beyond a very simple explanation of what a party is. The Court will not order a deputy to explain the primary system in such a manner that it becomes an order for the registrant to affiliate with the Democratic Party. The practical penalties for failure of an illiterate to com-

prehend this question must be borne by the illiterate. It would be a more grievous violation of our free election system to require a deputy to register all illiterates "Democrat".

II. SLOW-DOWN

The second charge has several facets. One of the elements of this slow-down charge is an allegation that any requirement of proof of residence for the statutory period is unlawful.[19] Because Article 8, Section 1(e) of the Louisiana Constitution specifically states that an applicant for registration must be able to prove his identity,[20] plaintiffs claim that any requirement that an applicant prove any other qualifications is unlawful.

This Court is not going to make that negative inference. Where definite qualifications are required by the Louisiana Constitution and statutes[21], reasonable requirements of proof of these qualifications can be inferred from the laws. Plaintiffs have pointed to no Louisiana law banning the Registrar from asking for reasonable proof of all qualifications, and this Court will not assume that the Louisiana Legislature intended to hamstring a Registrar by telling him he cannot ask for proof of any qualifications.

Plaintiffs allege that to do so impinges on the essential dignity of man in that it impliedly indicates mistrust of the sworn affidavit of the applicant. The court is aware that the protection of the Bill of Rights has been extended to areas which are not specifically within its wording, but which are within its penumbra.[22] But this court is not going to be so naive as to state that in the important affairs of life, among them voting, the sworn statement of the person asserting a right or possible right must be accepted. The standard jury instruction this court gives in all jury cases mentions, in connection with the credibility of the witnesses, that

the fact that a witness is under oath does not mean that his word must be accepted, "for anyone can lie if he has the will to do so." Based on the simple reality that people will perjure themselves, there is a valid reason for requiring proof of qualifications in all affairs of life. A man's rights are valuable only insofar as they are protected. One of the ways to do this is by careful scrutiny of those who assert those rights, to insure that the assertor is indeed entitled to them, lest the rights of the true owner be diluted by the claim of the fraud. An honest man does not resent this. He realizes that the small inconvenience or "indignity" he suffers by not having his statement accepted at face value is far outweighed by the protection he gets from the faker who might come in unchallenged. Part of the right to vote is the right not to have your vote diluted by the vote of those who are unaualified. To be asked to prove his qualifications for voting does not degrade a man and rob him of his dignity. Rather, it protects the very right he is seeking to assert.

Plaintiffs' counsel would have the court limit the remedy for false swearing to criminal penalties.[23] The fact that the applicant who gives false statements may later be subject to criminal penalties does not remedy the harm resulting from the tabulation of illegal ballots. Based on the above reasoning this court concludes that reasonable requests of proof of qualifications to vote are neither unlawful nor repugnant.

Moreover, the requirements for proof of residency involved here are reasonable. Residency is a fundamental, positive requirement for voting in an area,[24] and the proof of it is simple. This is not to say that a registrar could demand documented proof of all the requirements for voting. Proof of some of the requirements would be unreasonable, for example, any of the negative requirements: non-conviction of a crime, non-desertion from the Armed Forces, not ever declared insane by any court, and, under the law as it was prior to the striking of good moral character requirements as tests

and devices under the Voting Rights Act[25], not the parent of an illegitimate child withinthe last five years and not living by common-law marriage. Also, with regard to the native-born, proof of the positive requirement of citizenship by presentation of a birth certificate could be unreasonably burdensome to plaintiffs' class, since, until recently in this State, accurate records of birth were not kept in rural areas. To require a birth certificate could thus disqualify many of plaintiffs' class. But to prove residence for the required period, a wide variety of documents are acceptable. There was no showing that any prospective registrant who met the residence requirement was, or would be, unable to prove it by any of the possible combinations of proper documents. Rather, it would seem to be very easy for the legitimate applicant to meet this requirement so long as no one specific document or documents were demanded. The Court finds that the requirement of proof of residence is reasonable as well as lawful and consonant with human dignity.

The Court finds no support for the argument that documentation of residence comes within the ban of the Voting Rights Act on tests and devices.[26] Section 4(c)(4) of the Act includes in the definition of test or device any requirement that a registrant "prove his qualifications by the voucher of registered voters or members of any other class." Plaintiffs' ingenious theory would have documentation become the equivalent of the "voucher of members of a class", that is, the Court imagines, the class of people who give driver's licenses, library cards, rent receipts, postmarked envelopes, etc.

Congress undoubtedly meant this ban on "vouching" to hit at the requirement in some states that identity be proven by the voucher of two registered voters, which, where all or a large majority of the registered voters are white, minimizes the possibility of a Negro registering.[27] This court is not going to extend Congress' use of the language "voucher of members of any other class" to proof of residence that can be accomplished by a variety of documents.

Even without imaginative merit is plaintiffs' contention that the Registrar is administering a literacy test, in derogation of the ban imposed by the Voting Rights Act.[28] The deputy registrar hands the registration form to the registrant, and asks him to read the clause on the penalty for false statements. If he cannot read it, the registrar handles the registrant as an illiterate, and completes the form for him, after reading the clause to him. If the registrant can read it, he is classed as a literate, and completes the form himself. In no way is this a test of qualifications, since both the literate and illiterate qualify to register. This contention and argument of plaintiffs was frivolous and without merit.

Thus, as there is no showing of impropriety in the requirement of documentation of residence, this court will not order its discontinuation as long as a pattern of discrimination does not develop under it. We are not at liberty to impose our concept of administration on the Registrar[29], and, absent a showing of impropriety in the registration process, any changes ordered by this court would be just that.

The other element of the slow-down charge grows out of plaintiffs' belief that the Registrar's office is understaffed. Plaintiffs ask that the court order the hiring of more deputies. Again, this is a matter of office administration, and without a clear showing of a purposeful slow-down, the court is not going to involve itself in the myriad complexities connected with hiring deputies, such as budget authorizations, Civil Service regulations, preliminary training, and probationary periods.

Louisiana law[30] provides for twenty-five deputy registrars, in Orleans Parish, plus such temporary deputies as may be necessary. At present, due to budgetary limitations and Civil Service regulations, there are 22 deputy registrars. Vacations and sickness reduce the complement available in any given week.[31] The court feels that the Registrar is aware of his responsibilities and that he has assembled a staff sufficient to meet the needs of the people his

office serves. There is no evidence, in the record or elsewhere, that would indicate bad faith or a deliberate slow-down on the part of the Registrar. This court will not take over the functions of the Registrar with respect to management of personnel unless it is proven necessary that it do so.

III. FREEZE-OUT

The third charge alleges that the "freeze-out" doctrine bans the requirement of proof of residence, even if that requirement is fairly applied and otherwise permissible. The Registrar took office in 1961. By his own testimony, he initiated some changes in office administration and procedure shortly after beginning his duties. One of these changes, purportedly to curb abuses previously existent, was to tighten up the requirements for proof of residence.

The freeze-out doctrine, as enunciated by the Fifth Circuit[32] and recently applied by the Supreme Court in Louisiana v. United States, 380 U. S. 145 (1965), directs that where a state, because of past discriminatory practices, has registered a large proportion of its white citizens but only a small proportion of its Negro citizens, that state cannot then put into effect a more stringent qualification for voting. The reason for this is that the higher standard would, of course, keep many of the unregistered citizens from qualifying to vote. These unregistered persons would necessarily be mainly Negroes. Therefore, even if the new qualifications were completely fair and applied fairly, they would operate in a discriminatory manner because of past faults.

This court is altogether in agreement with the freeze-out doctrine and notes that Congress has used a similar principle in the Voting Rights Act.[33] The sole question here is whether it is applicable here. The court will assume that there has been prior discrimination against Negroes in Orleans Parish, and will even assume

that the difference between the percentage of eligible whites registered and the percentage of eligible Negroes registered is so great as to warrant general application of the doctrine in Orleans Parish. Nonetheless, the Court does not find that proof of residence is a new test or qualification within the scope of the freeze-out doctrine. Proof of residence is not a higher standard which might prevent people from registering. The same standard -- residence for a certain period -- is required. A person who met the requirement before 1961 but could not register because of discrimination is not now frozen out -- he can now register. All he need do is make a simple showing that he has resided where he claims for 90 days. The Court does not find that this requirement cannot be met with a reasonable amount of effort upon the registrant's part.

Therefore, IT IS ORDERED that the motion of plaintiffs A. L. Davis, et al, for a preliminary injunction be, and the same is hereby, DENIED.

Frank B. Ellis

UNITED STATES DISTRICT JUDGE

New Orleans, Louisiana

September 29, 1965

FOOTNOTES:

1. Gallinghouse v. Katzenbach, Civil Action #15863-C.

2. The Board of Registration is created under Article 8, §18 of the Louisiana Constitution, and has the power to remove any registrar and to adopt necessary rules for registration procedures in the state. Under the above Article and Section 18:1 of the Louisiana Revised Statutes, the Governor has the power to appoint the registrar for the parish of Orleans; this was not sufficient cause to hold the Governor in the suit.

3. Compare the evidence presented here - seven persons who registered or attempted to register, three ministers, and the Registrar - with United States v. Penton, 212 F.Supp 193 (M.D. Ala. 1962). Argument does not replace evidence; there was much argument in the instant case, but little evidence to support it.

4. For one extreme example of a case that could stand on statistics alone, see Chief Judge Tuttle's ironic introduction in United States v. Duke, 332 F. 2d 759 (5th Cir. 1964). See also United States v. Ward, 222 F.Supp. 617 (W.D. La. 1963).

5. New Orleans States-Item, September 25, 1965

6. United States v. Butler, 297 U.S. 1, 61 (1936).

7. Williams v. McCulley, 128 F.Supp. 897, 899 (W.D. La. 1955).

8. See text accompanying n. 15.

9. Byrd v. Brice, 104 F.Supp 442 (W.D. La. 1952).

10. ". . . (a) Drivers license bearing name of applicant and showing address to be in state and parish which was issued at least one year prior to date of application for registration. New act provides for parish residence of only six months. (b) Homestead exemption certificate for previous year. (c) Receipt for deposit on utilities (electricity, water or gas). (d) Library card for previous year. (e) Selective Service registration card. . . . (f) Rent receipts for past twelve months. (g) Deed or contract to purchase home (one year old). (h) Hunting or fishing license for previous year. (i) Copy of application for automobile license plates for previous year. (j) Letter from reputable firm or individual stating that they know the applicant personally and that applicant has lived in the state and parish for the required period as prescribed by law. . . ."

11. The Registrar thus determines that the applicant lived at the address at least 90 days previously. In order to insure that the applicant lives there at the time of registering, a card is sent to that address after registration is completed. If the registrant does not live there, the card is returned. Thus continuing residence for the requisite period is checked. The Registrar does not require proof of residence in the state for one year and the parish for six months, but rather only residence in the precinct for three months. See Article 8, §1 of the Louisiana Constitution and Section 18:31 of the Louisiana Revised Statutes.

12. Compare Yick Wo v. Hopkins, 118 U.S. 356, 366 (1886).

13. See Lane v. Wilson, 307 U.S. 268, 275 (1939).

14. This case is unlike United States v. Ward, 222 F.Supp 617 (W.D. La. 1963), in which the registrar refused to accept any proof from Negroes.

15. Testimony of Reverend Milton Upton, upon cross-examination by Mr. Schuler.

16. Louisiana Revised Statutes, §§ 18:33 and 18:308.

17. Section 4(a) of that Act prohibits certain states from denying a citizen the right to vote for his failure to comply with a test or device. The definition of test or device includes [§ 4(c)(1)-(2)] demonstrating the ability to read, write, understand, or interpret any matter or demonstrating any educational achievement or knowledge of any particular subject.

18. The figure in the Democrat column was arrived at by the Court by subtraction. No actual count of cards indicating "Democrat" was made, and thus there was no cross-check as to the complete accuracy of the figures; however, the Court and all parties were satisfied as to their substantial accuracy.

19. There is a question as to whether Louisiana law demands that the residence requirements be met at date of registration, or if it suffices to meet the requirements by the date of the next election. That point is squarely in issue in this Court in Perez v. Rhiddlehoover, Civil Action #15914-B. No allegation was made in the present case that persons who would meet the requirements by date of election were turned away for failing to meet them at the date of attempted registration. Therefore the Court finds it unnecessary to decide that question here.

20. Section 18:37 of the Louisiana Revised Statutes expands on the constitutional provision, and provides for proof of identity by the voucher of two registered voters. This requirement of the statute is banned by the Voting Rights Act, see text p. 11.

21. Article 8 Section 1 of the Louisiana Constitution and Sections 18:31 and 18:42 of the Louisiana Revised Statutes set down the basic qualifying and disqualifying factors.

22. See Griswold v. Connecticut, 381 U.S. 479 (1965).

23. Voting Rights Act of 1965 § 11(c); Louisiana Revised Statutes § 18:222.

24. Lassiter v. Northampton Election Board, 360 U.S. 45, 51 (1959); Estopinal v. Michel, 121 La. 879, 46 So. 907 (1908).

25. The definition of test or device includes [§ 4(c)(3)] requiring that a person possess good moral character. See n. 17.

26. See n. 17.

27. Louisiana has this requirement. Louisiana Revised Statutes § 18:37. For one example of the effect it can have when used as a tool for discrimination, see United States v. Manning, 205 F.Supp 172 (W.D. La. 1962).

28. See n. 17.

29. Williams v. McCully, 128 F.Supp. 897, 899 (W.D. La. 1955).

30. Louisiana Revised Statutes § 18:6(1).

31. The number of deputies actually at work was as follows:

Week of	#
August 11	21
August 16	21
August 23	16
August 30	19
September 8	19
September 13	21
September 20	20

32. See United States v. Atkins, 323 F.2d 733, 743-45 (5th Cir. 1963).

33. Section 5 of that Act requires that a state in which tests or devices are banned seek permission before applying any voting qualification different from those in effect on November 1, 1964.

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. QUITMAN CROUCH, REGISTRAR OF VOTERS OF ST. HELENA PARISH, LOUISIANA; AND THE STATE OF LOUISIANA, Defendants.	)	CIVIL ACTION NO. _____ COMPLAINT

The United States of America alleges that:

1. This action is instituted by the Attorney General of the United States pursuant to the provisions of 42 U.S.C. 1971.

2. This Court has jurisdiction of this action under 42 U.S.C. 1971(d) and 28 U.S.C. 1345.

3. The State of Louisiana is joined as a party defendant pursuant to 42 U.S.C. 1971(c).

4. Defendant Quitman Crouch is, and has been since about June 1959, the duly appointed Registrar of Voters for St. Helena Parish, Louisiana. He resides in Montpelier, Louisiana.

5. As Registrar of Voters for St. Helena Parish, defendant Quitman Crouch is an official and agent of the defendant State of Louisiana.

6. Under Louisiana law, registration is a prerequisite to voting in any election. In St. Helena Parish registration is permanent. Voters are not required to re-register unless their names are removed from the voter rolls in accordance with law. Until May 1963, registration was periodic so that every four years all persons desiring to vote had to re-register. All persons now permanently registered in St. Helena Parish have registered since January 1, 1961.

7. Under Louisiana law, defendant Quitman Crouch, as registrar of voters, receives and passes upon applications for registration to vote in St. Helena Parish and determines whether or not each applicant is qualified to register and to vote.

8. In St. Helena Parish there are approximately 2,363 white persons and 2,082 Negroes of voting age. At the end of the last registration period, December 31, 1960, there

were approximately 2,300 white persons and 1,200 Negroes registered to vote. As of August 31, 1963, there were 1,795 white persons and only 320 Negroes registered to vote in St. Helena Parish.

9. The defendants Quitman Crouch and the State of Louisiana, in conducting the registration of voters in St. Helena Parish, have engaged in racially discriminatory acts and practices which include, but are not limited to, the following:

a. Applying different and more stringent procedures, requirements and standards to Negro applicants than to white applicants in determining whether such applicants are qualified to register to vote;

b. Failing and refusing to afford to Negro applicants the same or equal opportunity to register to vote as is afforded to white applicants;

c. Rejecting the applications of qualified Negroes;

d. Enforcing, during the period from about June 1959 to about September 1962, the requirement that applicants for registration must be able to read and give a reasonable interpretation of any

section of the Constitution of the United States or the Constitution of the State of Louisiana;

e. Enforcing as a voter qualification during the period from about August 25, 1961, to about September 18, 1962, a test requiring applicants to answer correctly two out of four of a series of fourteen oral questions about history and government;

f. Enforcing since about September 18, 1962, as a voter qualification, after 1,733 white persons and only 207 Negroes had registered to vote, a test requiring applicants to answer correctly on a printed form four multiple choice questions on history and government;

g. Using the registration forms LR-1 and 11 as a highly technical examination for Negro applicants but not white applicants;

10. The racially discriminatory acts and practices of the defendants as described in paragraph 9 of this Complaint have deprived Negro citizens in St. Helena Parish of the

right to vote without distinction of race or color in violation of 42 U.S.C. 1971(a). These deprivations have been and are pursuant to a pattern and practice.

11. The defendants Quitman Crouch and the State of Louisiana will, unless restrained by order of this Court, continue to engage in the racially discriminatory acts and practices set forth in this Complaint.

WHEREFORE, plaintiff respectfully prays:

1. That this Court make a finding that the acts and practices described in this Complaint constitute deprivations of the rights secured by 42 U.S.C. 1971(a) and that these deprivations were and are pursuant to a pattern and practice of discrimination.

2. That this Court issue a preliminary and permanent injunction enjoining the defendants Quitman Crouch and the State of Louisiana, their agents, employees, successors, and all persons in active concert and participation with them from:

a. Engaging in any act or practice which involves or results in distinctions of race or color in conducting the registration of voters in St. Helena Parish, Louisiana;

b. Engaging in any act which would deprive any citizen in St. Helena Parish, Louisiana of the right to register and to vote without distinction of race or color;

c. Engaging in any act which would delay, prevent, hinder or discourage Negro citizens in St. Helena Parish, Louisiana, on account of their race or color from applying for and becoming registered voters;

d. Applying different and more stringent registration procedures, requirements or standards to Negro applicants for registration than were applied to a majority of the white voters of St. Helena Parish when they registered to vote.

3. That this Court order the defendants to place upon the current voter registration rolls of St. Helena Parish, Louisiana, and otherwise register all Negroes who have applied for and been denied registration who possess the qualification requirements applied to white persons who have been registered.

4. That this Court issue such additional orders as will insure the fair, equal and non-discriminatory administration of registration requirements and procedures in St. Helena Parish, Louisiana.

5. That this Court grant such additional relief as justice may require, together with the costs and disbursements of this action.

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IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. FLETCHER HARVEY, REGISTRAR OF VOTERS OF WEST FELICIANA PARISH, LOUISIANA; AND THE STATE OF LOUISIANA, Defendants.	CIVIL ACTION NO._____ C O M P L A I N T

Plaintiff, the United States of America, alleges:

1. That this action is instituted by the Attorney General in the name of the United States pursuant to the provisions of 42 U.S.C. 1971.

2. This Court has jurisdiction of this action under 42 U.S.C. 1971(d) and 28 U.S.C. 1345.

3. The State of Louisiana is joined as a party defendant pursuant to 42 U.S.C. 1971(c).

4. Defendant Fletcher Harvey is, and has been since about December 1962, the duly appointed Registrar of Voters for West Feliciana Parish, Louisiana. He resides in West Feliciana Parish.

5. As Registrar of Voters for West Feliciana Parish, defendant Fletcher Harvey is an official and agent of the defendant State of Louisiana.

6. Under Louisiana law, registration is a prerequisite to voting in any election. In West Feliciana Parish, Louisiana, registration is periodic; every four years all persons desiring to vote must reregister. The present four-year registration period began January 1, 1961.

7. Under Louisiana law, defendant Fletcher Harvey, as Registrar of Voters for West Feliciana Parish, receives and passes upon applications for registration to vote in all elections in West Feliciana Parish. In passing upon such applications, the said defendant registrar determines whether each applicant is qualified to vote.

8. A registration requirement under Louisiana law is that an applicant for registration be able to identify himself. Louisiana law provides that if the registrar has good reason to believe that the applicant is not the person he represents himself to be, the registrar may require him to produce two credible voters of his precinct to identify him in order to register to vote.

9. A further requirement under Louisiana law is that an applicant for registration be a resident of the State for one year, of the parish for six months and of the precinct for three months. In completing the application for registration form provided for by Louisiana law, the applicant must state under oath the dates at

which he commenced his residency in the State, parish, and precinct.

10. In West Feliciana Parish there are approximately 2,814 white persons and 4,553 Negroes of voting age. These population figures include the inmate population of the Louisiana State Penitentiary at Angola, Louisiana, totaling approximately 1,427 white persons and 1,793 Negroes over the age of 14.

11. No Negro was registered to vote in West Feliciana Parish from at least 1904 until October 17, 1963. As of September 30, 1963, there were approximately 1,207 white persons registered to vote in West Feliciana Parish.

12. Prior to October 17, 1963, when there were no Negroes registered to vote in West Feliciana Parish, the defendants Fletcher Harvey and the State of Louisiana required Negro applicants for registration to produce two registered voters from their ward to identify them.

13. Commencing on October 17, 1963, the defendants Fletcher Harvey and the State of Louisiana in conducting the registration of voters in West Feliciana Parish have engaged in the following racially discriminatory acts and practices:

(a) Unreasonably requiring Negroes as a prerequisite to making application for registration to vote to prove that they meet the residency requirements of Louisiana law by producing documents or two voters registered in their precinct.

(b) Refusing to permit Negroes to apply for registration to vote on the basis of their

own sworn statement as to their length of residence;

(c) Applying different and more stringent procedures, requirements and standards to Negro applicants for registration to vote than have been applied to white applicants;

(d) Unreasonably delaying the receipt of applications from Negro applicants for registration to vote.

14. The acts and practices of the defendants as described in this Complaint deprive Negro citizens in West Feliciana Parish of the right to register to vote and to vote without distinction of race or color in violation of 42 U.S.C. 1971(a). These deprivations have been and are pursuant to a pattern and practice of racial discrimination.

15. The defendants, Fletcher Harvey and the State of Louisiana, will, unless restrained by order of this Court, continue to engage in discriminatory acts and practices the same as or similar to those set forth in this Complaint.

WHEREFORE, plaintiff respectfully prays:

1. That the Court make a finding that the acts and practices described in this Complaint constitute deprivations of the right secured by 42 U.S.C. 1971(a) and that these deprivations were and are pursuant to a pattern or practice.

2. That the Court enjoin the defendants, Fletcher Harvey and the State of Louisiana, their agents, employees, successors, and all persons in active concert and partici-

pation with them, from:

(a) Unreasonably requiring Negroes as a prerequisite to making application for registration to vote in West Feliciana Parish to prove that they meet the residence requirements of Louisiana law by producing documents or two voters registered in their precinct;

(b) Refusing to permit Negroes to apply for registration to vote in West Feliciana Parish on the basis of their own sworn statement as to their length of residence;

(c) Applying different and more stringent procedures, requirements and standards to Negro applicants for registration to vote in West Feliciana Parish than have been applied to white applicants;

(d) Engaging in any act or practice which involves or results in distinctions on the basis of race or color between Negro citizens and other citizens in registration for voting in West Feliciana Parish;

(e) Unreasonably delaying the receipt of applications from Negroes applying for registration to vote in West Feliciana Parish.

3. That this Court grant such additional relief as justice may require, together with the costs and disbursements of this action.

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Department of Justice

Please Retain Original Order

In the

Supreme Court of the United States

October Term, 1963

No. .....

Dewey McLaughlin and Connie Hoffman,
also known as Connie Gonzalez,

Appellants,

—v.—

The State of Florida,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

JURISDICTIONAL STATEMENT

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Other Authorities:

Greenberg, Race Relations and American Law (1959) 14

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Weinberger, A Reappraisal of the Constitutionality of Miscegenation Statutes, 42 Cornell L. Q. 208 (1957) 14, 17

In the

Supreme Court of the United States

October Term, 1963

No. .....

Dewey McLaughlin and Connie Hoffman,
also known as Connie Gonzalez,

Appellants,

—v.—

The State of Florida,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Supreme Court of Florida which affirmed, on May 1, 1963, the judgments of conviction entered by the criminal court of record of Dade County, Florida. The final order of the Supreme Court of Florida was entered May 30, 1963 with denial of appellants' petition for rehearing (R. 213). Appellants submit this statement to show that this Court has jurisdiction of the appeal and that a substantial question is presented. In the alternative, should the Court regard this appeal as having been improvidently taken, appellants pray that this statement be regarded and acted upon as a petition for a writ of certiorari in accordance with 28 U. S. C. §2103.

Citation to Opinion Below

The criminal court of record of Dade County, Florida did not render an opinion. The opinion of the Supreme Court of Florida is reported in 153 So. 2d 1 (1963) and is printed in the appendix hereto, *infra,* pp. .

Jurisdiction

Appellants were convicted in the criminal court of record of Dade County, Florida on June 24, 1962 of violating Fla. Stat. Anno. §798.05. They appealed to the Supreme Court of Florida contending that the convictions violated the equal protection and due process clauses of the Fourteenth Amendment. On May 1, 1963, the Supreme Court of Florida affirmed the convictions and decided in favor of the validity of §798.05 under the Constitution of the United States (R. 202). Petition for rehearing in the Supreme Court of Florida was denied May 30, 1963 (R. 213).

Appellants filed Notice of Appeal in the Supreme Court of Florida on August 29, 1963 (R. 215). Jurisdiction of this Court on appeal rests upon 28 U. S. C. §1257 (2). *Williams* v. *Bruffy,* 96 U. S. 176; *Largent* v. *Texas,* 318 U. S. 418.

Constitutional and Statutory Provisions Involved

1. Petitioners were convicted of violating Fla. Stat. Anno. §798.05 (Volume 22, Title 44, p. 227), which provides:

> §798.05—Negro man and white woman or white man and negro woman occupying same room.
>
> "Any negro man and white woman, or any white man and negro woman, who are not married to each other,

who shall habitually live in and occupy in the nighttime the same room shall be punished by imprisonment not exceeding twelve months, or by fine not exceeding five hundred dollars."

2. The case also involves Fla. Stat. Anno. §741.11[1] (Vol. 21, Title 42, p. 330) which provides:

> §741.11—Marriages between white and negro persons prohibited.
>
> It is unlawful for any white male person residing or being in this state to intermarry with any negro female person; and it is in like manner unlawful for any white female person residing or being in this state to intermarry with any negro male person; and every marriage formed or solemnized in contravention of the provisions of this section shall be utterly null and void, and the issue, if any, of such surreptitious marriage shall be regarded as bastard and incapable of having or receiving an estate, real, personal or mixed, by inheritance.

3. The case also involves Fla. Stat. Anno. §1.01 (Vol. 1, Title 1, p. 124) providing:

> §1.01—Definitions.
>
> . . . (6) The words "negro", "colored", "colored persons", "mulatto" or "persons of color", when applied to persons, include every person having one-eighth or more of African or negro blood.

4. This case also involves Section 1 of the Fourteenth Amendment to the Constitution of the United States.

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1 Petitioners were not charged under this law.

Questions Presented

Do these convictions violate the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution where:

(1) The State has (by Fla. Stat. Anno. §798.05) created a crime expressly defined in terms of race which punishes Negroes and whites who engage in certain conduct together, but does not forbid such conduct engaged in by Negroes only or whites only?

(2) Common law marriage is a defense for a couple charged under Fla. Stat. Anno. §798.05 but was unavailable to appellants because Fla. Stat. Anno. §741.11 prohibits marriage between Negroes and whites?

(3) Florida's purported definition of "Negro" and "white" persons in Fla. Stat. Anno. §1.01—an essential element of the crime created by Fla. Stat. Anno. §798.05—is so vague and indefinite as applied as to afford no fair warning to appellants or standard of criminality for the court or the jury?

Statement

Appellants were arrested in February 1962 and charged with having violated Fla. Stat. Anno. §798.05 in that "the said Dewey McLaughlin, being a Negro man, and the said Connie Hoffman, also known as Connie Gonzalez, being a white woman, who were not married to each other, did habitually live in and occupy in the nighttime the same room" (R. 10). Mr. McLaughlin, a Spanish-speaking man born in Honduras (but apparently a U. S. citizen) was employed in a Miami Beach hotel (R. 140). Appellant Connie Hoffman began residing in a one room apartment

at 732 Second Street, Miami Beach, Florida in April 1961 (R. 37). The owner of the premises, Mrs. Dora Goodnick, testified that she saw McLaughlin at various times in December 1961 and February 1962 enter the apartment house at night and leave in the morning (R. 38-40). Mrs. Goodnick also claimed to have seen him showering in the bathroom and heard him talking to appellant Hoffman in her apartment at night (R. 50-52). Appellant Hoffman told Mrs. Goodnick that McLaughlin was her husband (R. 38). Mrs. Goodnick stated that she was disturbed that a colored man was living in her house and consequently reported the situation to the police (R. 39).

Detectives Stanley Marcus and Nicolas Valeriana of the Miami Beach Police Department went to appellant Hoffman's apartment at 7:15 P.M. February 23, 1962, to investigate a charge that she was contributing to the delinquency of her minor son (R. 60, 75). They knocked at the door and a man's voice answered, "Connie, come in," but the door was not opened (R. 61-62). Valeriana went to the back of the apartment and found McLaughlin exiting from the rear door (R. 70). In the questioning which followed, McLaughlin admitted that he had been living there with Hoffman (R. 73) and that on at least one occasion he had had sexual relations with her (R. 80). But, there was no charge or conviction of fornication or adultery. The detectives also observed pieces of McLaughlin's wearing apparel draped across furniture in the room (R. 77). Appellant Hoffman came to the police station where McLaughlin was being held and while there stated that she was living with him but thought that this was not unlawful (R. 82). At trial Detective Valeriana identified her as a white woman and Dewey McLaughlin as a Negro from their appearances (R. 100-101, 103).

Josephine De Cesare, a secretary in the City Manager's Office, testified that in the process of securing a civilian

registration card, McLaughlin stated in January 1961, that he "was separated and that his wife's name was Willie McLaughlin" (R. 125, 127). Dorothy Kaabe, a child welfare worker in the Florida State Department of Public Welfare testified that in an interview on March 5, 1962, appellant Hoffman stated that she began living with McLaughlin as her common law husband in September or October 1961 but had never had a formal marriage to him (R. 143).

Each defendant was convicted by a jury and each was sentenced to thirty days in the County Jail at hard labor and fined $150.00, plus costs, and in default of such payment to an additional 30 day term (R. 14-17).

How the Federal Questions Were Raised and Decided

On March 1, 1963, an information was filed against appellants charging them with violation of Fla. Stat. Anno. §798.05 (R. 10). They filed a motion to quash the information alleging that §798.05 was contrary to the Fourteenth Amendment of the United States Constitution in that it was vague, denied due process and equal protection of the laws, and was an invasion of the right to privacy (R. 12-13). The Motion to Quash was denied (R. 14). During trial, appellants moved for directed verdict on the grounds that criteria for identifying a "Negro" under §798.05 must be established by reference to Fla. Stat. Anno. §1.01 and that the standard of proof of this element was vague, in terms of evidence introduced by the state and as set forth in §1.01 (R. 104-108, 152). Appellants specifically related the motion for directed verdict to the unconstitutional vagueness of §798.05 (R. 104-105), asserting that no one could be apprised that his behavior was prohibited given the unclear definition of the term

"Negro" (R. 104-105). The motion for directed verdict was denied (R. 108, 152).

Upon submitting the case to the jury, the judge gave instructions that in Florida a Negro and a white person could not have lawfully married, either by common law or formal ceremony (R. 161). No exception was taken to this instruction at the trial.

On July 3, 1962, defendants filed a motion for new trial on the grounds that the court erred in overruling the motion to quash the information which had alleged that §798.05 was contrary to the Fourteenth Amendment. Error was also claimed in that the trial court had permitted the testimony of Detective Valeriana, based on his observation of the appearance of appellant McLaughlin, to satisfy the statutory criteria defining the term "Negro" (R. 17-18). The motion for new trial was denied (R. 19).

On appeal the assignment of errors again alleged that Fla. Stat. Anno. §798.05 violated the Fourteenth Amendment of the United States Constitution in that it was vague and indefinite, operated to deny equal protection and due process of law, and authorized an undue invasion of the right of privacy (R. 21-22). Error was also assigned to the overruling of the motion for new trial and to the overruling of the objection to the standard of proof accepted for the identification of appellant McLaughlin as a Negro (R. 22).

In affirming the conviction, the Supreme Court of Florida discussed only whether the special crime of interracial cohabitation was valid under the Fourteenth Amendment, and sustained the law relying on *Pace* v. *Alabama,* 106 U. S. 583. The court stated:

> This cause is here on appeal from the Criminal Court of Record of Dade County. The trial court di-

rectly passed upon the validity of a State statute and we, therefore, have jurisdiction . . . (R. 202).

* * *

The appellants seek adjudication of their right to engage in integrated illicit cohabitation upon the same terms as are imposed upon the segregated lapse. But, as was admitted by counsel in argument, this appeal is a mere way station on the route to the United States Supreme Court where defendants hope that, in the light of supposed social and political advances, they may find legal endorsement of their ambitions.

This Court is obligated by the sound rule of stare decisis and the precedent of the well written decision in *Pace,* supra. The Federal Constitution, as it was when construed by the United States Supreme Court in that case, *Pace* v. *Alabama* is quite adequate but if the new-found concept of "social justice" has outdated "the law of the land" as therein announced and, by way of consequence, some new law is necessary, it must be enacted by legislative process or some other court must write it (R. 204-205).

Appellants' brief in the Florida Supreme Court argued that the instruction of the jury in accordance with the miscegenation law violated their rights (R. 180-183). The state countered by arguing that the law was valid under the Fourteenth Amendment and that the instruction could only be a harmless error (R. 195-199). Appellants sought rehearing attempting to secure the Florida Supreme Court's discussion of this issue (R. 207), but rehearing was denied without opinion (R. 213).

The Questions Presented Are Substantial

I

The Court Below Affirmed Racially Discriminatory Criminal Convictions Under an Expressly Racial Statute in Mistaken Reliance Upon *Pace* v. *Alabama*, 106 U. S. 583. However, if *Pace* Is Deemed Controlling, It Should No Longer Be Followed Because It Is Inconsistent With Many Subsequent Decisions of This Court.

This case presents a substantial question deserving plenary hearing before this Court on appeal. The conviction of appellants represents a manifest discrimination, erroneously sought to be justified by the court below as compelled by *Pace* v. *Alabama,* 106 U. S. 583 (1883), a case involving a discrete issue. Tony Pace and his co-defendant would have been guilty of a crime in Alabama even if they had both been white—though, to be sure, their punishment would have been less.

However, if Dewey McLaughlin and Connie Hoffman had been found by the jury to be both white or both Negroes they would have been set free. But for their race (as determined by the jury) no crime would have been committed under §798.05. This law makes it a crime punishable by 12 months in jail and a $500 fine for an unmarried man and woman habitually to live in and occupy the same room in the nighttime, if (and *only* if) one is a Negro and the other is white. Unlike the Alabama situation in *Pace* v. *Alabama,* 106 U. S. 583, Florida has *not* made it a crime at all for a man and woman of the same race to engage in the identical conduct charged. There is no general nonracial (or single-racial) counterpart of §798.05 in the Florida statutes. Florida recognizes common law marriages (see *infra* p. 13).

Thus, the conduct with which appellants were charged is licit under Florida law for persons of the same race.

Conviction under this law involves so gross a denial of equal protection as to command the attention of the Court. Stripped of emotional overtones, the case is simple indeed. Who would doubt that the equal protection clause would invalidate a scheme of laws providing that it was a crime for automobiles occupied by Negroes and whites to exceed 25 m.p.h. but providing no speed limit for any other automobiles. Such a legal scheme—and innumerable hypothetical parallels—would probably be laughed out of court with dispatch. But our hypothesized speeding law shares the same infirmity as §798.05 does—it punishes an activity only if and because it is interracial.

Florida has not advanced (and cannot advance) any constitutionally acceptable basis for making the conduct described by §798.05 a crime only when persons of different races are involved.[2]

As early as 1896, this Court said that criminal justice must be administered "without reference to considerations based on race," *Gibson* v. *Mississippi,* 162 U. S. 565, 591. From *Buchanan* v. *Warley,* 245 U. S. 60 to *Peterson* v. *Greenville,* 373 U. S. 244, the Court has repeatedly struck down laws attempting to require separation of the races by imposing criminal penalties. Such a law was involved in

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2 Of course, the State's power to regulate sexual immorality is not challenged. But this law does not require any proof of sexual or other misconduct; it merely regulates who occupies a room. There is some reason to doubt whether, aside from the racial dimensions of the law, Florida can justify punishing this conduct. Cf. *Robinson* v. *California,* 370 U. S. 660. In numerous situations such a nonracial statute would not seem justified; its coverage would include such cases as unmarried members of the same family occupying a room, nurses and patients, the physically handicapped, etc.

Dorsey v. *State Athletic Commission,* 168 F. Supp. 149 (E. D. La. 1958), affirmed 359 U. S. 533, where Louisiana made it a crime punishable by a year in jail for a Negro and a white person to engage in boxing matches and other athletic contests. No one contested Louisiana's power to prohibit boxing; that State was denied the power to allow it generally but prohibit interracial contests. Many comparable laws have been invalidated. For example, desegregated golf matches were criminally punishable by the law struck down in *Holmes* v. *Atlanta,* 350 U. S. 879, reversing 223 F. 2d 93 (5th Cir. 1955), and South Carolina's school segregation law (S. C. Code 1952, §5377) merely made it a crime for any person to attend a school established for persons of another race. *Brown* v. *Board of Education,* 347 U. S. 483. See also *Gayle* v. *Browder,* 352 U. S. 903, aff'g 142 F. Supp. 707 (M. D. Ala. 1956).

In short, "race is constitutionally an irrelevance" (*Edwards* v. *California,* 314 U. S. 160, 185), and "racial differences cannot provide a valid basis for governmental action" (*Abington School District* v. *Schempp,* 374 U. S. 203, 10 L. ed. 2d 844, 912, Justice Stewart dissenting). See also, *Goss* v. *Board of Education,* 373 U. S. 683, 10 L. ed. 2d 632, 635, and cases cited. In the words of the first Justice Harlan, the Constitution is "color blind," *Plessy* v. *Ferguson,* 163 U. S. 537, 558. The decision below is in the teeth of this Court's repeated holdings that racial segregation laws are invalid.

As noted above, this case is different from *Pace* v. *Alabama, supra,* where the conduct alleged was criminal irrespective of the race of the parties. Appellants were not charged with violating Fla. Stat. Anno. §798.04, prohibiting interracial fornication; if they had been the case would be like *Pace,* for the non-racial law covering the same conduct

(Fla. Stat. §798.03) carries a lesser penalty.[3] But appellants have no hesitancy in urging that *Pace* should be overruled if its reasoning—that interracial illicit conduct is a "different crime" from that punished by the general law—is thought to extend to this case. *Pace* stands as an isolated vestige of the "separate but equal" era inconsistent with the entire development of the law at least since *Buchanan* v. *Warley,* 245 U. S. 60. It is notable that this Court has cited *Pace* only two times in the eighty years since it was decided; race discrimination was not an issue in either case.[4] It ought to be overruled. No segregation law would ever be invalidated under the reasoning of *Pace* that equality is assured where a Negro and white co-defendant are liable to the same punishment. Cf. *Shelley* v. *Kraemer,* 334 U. S. 1, 22.

The issue involved here is not confined to Florida; at least six other states have laws similar to §798.05.[5]

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3 If this case is viewed as presenting the *Pace* issue, the following facts would be pertinent. Appellants were fined $150 and given a 30 day jail term. (They were liable under §798.05 to a $500 fine and a 12 month term.) The maximum sentence under the general fornication law (§798.03) is a $30 fine and a 3 months term. The interracial fornication and adultery law (§798.04) carries a possible $1,000 fine and 12 months in jail.

4 See e.g. *Moore* v. *Missouri,* 159 U. S. 673, 678 (1895); *Hill* v. *United States ex rel. Weiner,* 300 U. S. 105, 109 (1937).

5 Ala. Code tit. 14, §360 (adultery, marriage, or fornication between white and Negro, 2 to 7 years); Ark. Stats. Ann. §41-806 (concubinage between white and Negro, 1 month to 1 year); La. Rev. Stats. §14:79 (miscegenation statute includes habitual cohabitation of racially mixed couple; up to 5 years); Nev. Rev. Stats. ch. 201.240 (white and colored persons living and cohabiting in state of fornication, $100 to $500, 6 months to 1 year, or both); N. Dak. Rev. Code ch. 12-2213 (unmarried racially mixed couple occupying same room; up to 1 year, $500 fine, or both); Tenn. Code Ann. §36-402 (1955) (marriage or living together as man and wife of racially mixed couple prohibited; 1 to 5 years or fine and imprisonment in county jail).

II

Appellants' Conviction Denied Them Due Process and Equal Protection of the Laws Under the Fourteenth Amendment in That a Common Law Marriage Was Held to Be Unavailable as a Defense to the Crime Because of a Florida Law Declaring Interracial Marriages Null and Void.

In charging the jury the judge stated (R. 161):

"I further instruct you that in the State of Florida it is unlawful for any white female person residing or being in this state to intermarry with any Negro male person and every marriage performed or solemnized in contravention of the above provision shall be utterly null and void."

This charge was in accord with Fla. Stat. Anno. §741.11. The statute under which appellants were prosecuted (§798.05) makes marriage a defense to the charge, and Florida gives full recognition to common law marriage, according it the same legal incidents available in a formal marriage. (See, e.g., *Chaachow* v. *Chaachow,* 73 So. 2d 830 (1954); *Navarro* v. *Baker,* 54 So. 2d 59 (1951).) Of course, one of the ways of proving common law marriage is by "repute" and there was evidence of representations by appellant that McLaughlin was her husband (R. 38, 143). But the sufficiency of the evidence is not in issue because the judge's charge, based on Fla. Stat. Anno. §741.11, removed from the jury's consideration any evidence tending to establish the defense of marriage if they found that one appellant was Negro and that the other was white.

The constitutionality of the anti-miscegenation statute (§741.11) is relevant because the crime requires appellants to be "unmarried" and the indictment so charged.

The question is whether a state can forbid parties by statute from contracting a lawful marriage within the state because of their race, and then convict the same parties for entering into "unlawful" cohabitation?

This Court has not determined the validity of a miscegenation law. *Pace* v. *Alabama, supra,* did not involve a marriage; although the statute in *Pace* forbids intermarriage as well as adultery and fornication, no charge of intermarriage was made. No decision on the merits of this issue was reached by this Court in either *Naim* v. *Naim,* 350 U. S. 891 (1955), app. dismissed 350 U. S. 985, or *Jackson* v. *Alabama,* 348 U. S. 888, a denial of certiorari. Miscegenation laws have been recently on the books in over 20 states and many others have been repealed, some in recent years.[6] These laws have been upheld by at least twelve states' highest courts.[7] But the California Supreme Court has held its law unconstitutional under the Fourteenth Amendment in *Perez* v. *Lippold,* 32 Cal. 2d 711, 198 P. 2d 17 (1948).

It seems quite clear in view of subsequent decisions that *Perez* v. *Lippold* reached the proper result under the Fourteenth Amendment. This Court's many decisions holding racial segregation laws invalid, from *Buchanan* v. *Warley,* in 1917, to date, destroy any possible argument in favor of the validity of §741.11. The racists' "pure races" theory and other similar notions offered in attempted justification for such a law have all been rejected in connection with other segregation laws. (See generally Weinberger, *op. cit.*)

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6 Lists of the laws appear in Weinberger, *A Reappraisal of the Constitutionality of Miscegenation Statutes,* 42 Cornell L. Q. 208 (1957), and Greenberg, *Race Relations and American Law,* Appendix A. 28, pp. 397-398 (1959).

7 Weinberger, *op. cit.* 209.

The states have traditionally exercised control over the marital institution. *Maynard* v. *Hill,* 125 U. S. 190; *Reynolds* v. *United States,* 98 U. S. 145. But the liberty protected by the due process clause "is not confined to mere freedom from bodily restraint"; rather, it "extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective." *Bolling* v. *Sharpe,* 347 U. S. 497, 499. The right to marry is a protected liberty under the Fourteenth Amendment. In *Meyer* v. *Nebraska,* 262 U. S. 390, 399, the Court said:

> While this Court has not attempted to define with exactness the liberty thus guaranteed (by the Fourteenth Amendment), the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to . . . marry, establish a home and bring up children. . . .

The essence of the right to marry is a freedom to join in marriage with the person of one's own choice.

Another incident of the right to marry is the right of privacy. Under the circumstances of these convictions, not only may a private relationship be subjected to criminal prohibition but a private place—the home—is unjustifiably subjected to governmental regulation, and the types of invasion of privacy attendant upon investigation of crime, e.g., surveillance, searches, etc. The due process clause of the Fourteenth Amendment protects the right of privacy (*Mapp* v. *Ohio,* 367 U. S. 643; see also *Poe* v. *Ullman,* 367 U. S. 497, 517-522 (dissenting opinion); cf. *Public Utilities Commission* v. *Pollak,* 343 U. S. 451, 467, 469 (dissenting opinion)), and privacy of association

(*NAACP* v. *Alabama,* 357 U. S. 449) from unwarranted state interference. The state cannot show that any valid governmental purpose is furthered by the deprivation of liberty occasioned by the miscegenation law.

III

Appellants Were Denied Due Process of Law Under the Fourteenth Amendment Because the Statute Under Which They Were Convicted Was Vague and Indefinite.

In order to convict under §798.05 the state must prove that one party is a "Negro." The purported definition of "Negro" occurs in §1.01 of the Florida statutes, which holds any person with "one eighth or more of African or Negro blood" to be a "Negro." Section 1.01, on its face, and as applied at the trial, is so ambiguous and susceptible of such diversified interpretation that the standard of clarity required by the due process clause of the Fourteenth Amendment is lacking.

No reasonably unvarying definition can be given to the terms "African or Negro blood." First, one deficiency of the definition is readily apparent, i.e., that "Negro" is defined by using the word sought to be defined—in the phrase "Negro blood." This is no help at all. "African" might seem at first to be a finite concept. But does Florida really mean to refer to all citizens of African countries—to the citizens of North Africa and the Afrikaners of South Africa for example? When it is considered that the population of the vast African continent is diverse and constantly changing, the definition is exposed as meaningless. But of course there is a great deal more. There is no such thing as African or Negro "blood" in any genetic or biological sense, and there is no known method by which

proportions of such "blood" (such as 1/8th) can be determined. One scholar remarked:

> Laws prohibiting marriage between "whites and persons having one-eighth or more of Negro blood" are compounded of legal fiction and genetic nonsense. Hager, "Some Observations on the Relationship Between Genetics and Social Science," 13 Psychiatry 371, 375 (1950).[8]

Florida's definition, employing fractions of blood, rests on the assumption that somewhere it is possible to find, and to ascertain that one has found, a racially pure person—e.g., a man with 100% Negro "blood." But neither the statute nor science tells us how this fine calculation and determination possibly can be made. Unless one can locate such purity somewhere the whole system of fractions breaks down and becomes unserviceable. It is, of course, even more remarkable to make a man legally bound to know and act on the basis of the racial "blood" of his great-grandparents or even more remote ancestors. This is comparable to the Louisiana statute invalidated by this Court which required "the impossible," namely, that one give an affidavit that none of the officers in his organization were Communists or subversives. *Louisiana* v. *NAACP*, 366 U. S. 293.

In this case the trial court sought to avoid all these problems by ignoring the statutory framework (the 1/8th rule) and simply allowing a jury to determine race on a policeman's testimony as to appellants' appearance (R. 100-101, 103). When this standard is made an "appearance" standard—the average man's or indeed juror's

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8 And see generally the authorities collected in Weinberger, *op. cit.* 217-221.

opinion as to what race appearance indicates—then the last pretense of statutory clarity is gone. The appearance standard is obviously a varying and easily shifting method in which a man's race is not an objective thing at all, but rather springs from the mind and eye of each beholder. That such a standard should not be used in sending people to jail is so obvious that it need not be labored. Differences of opinion, perception, etc., as to race based on appearance are a commonplace of life. To make a man conduct his affairs on the basis of a preliminary guess as to what his race will be in the opinion of some future unknown witnesses and jurors using an appearance rule places liberty on a slippery surface unworthy of the criminal law of a civilized society. It is easily as vague as the term "gangster" in the New Jersey law invalidated in *Lanzetta* v. *New Jersey,* 306 U. S. 451. The vice is compounded by the fact that §1.01(6) never gave a hint that some rough rule of thumb was involved; on its face it pretends mathematical precision.

CONCLUSION

It is respectfully submitted that for the foregoing reasons the questions presented are substantial and the Court should herein determine this appeal, and upon consideration thereof reverse the judgments below.

Respectfully submitted,

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APPENDIX

APPENDIX

Opinion Below

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DETERMINED

IN THE

SUPREME COURT OF FLORIDA

January Term, A.D. 1963

Case No. 31,906

DEWEY MCLAUGHLIN and
CONNIE HOFFMAN also
known as CONNIE GONZALEZ,

Appellants,

—v.—

STATE OF FLORIDA,

Appellees.

Opinion filed May 1, 1963

An Appeal from the Criminal Court of Record for Dade County, GENE WILLIAMS, Judge

ROBERT RAMER, H. L. BRAYNON and G. E. GRAVES, for Appellants

RICHARD W. ERVIN, Attorney General, and JAMES G. MAHORNER, Assistant Attorney General, for Appellees

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CALDWELL, *J.*

This cause is here on appeal from the Criminal Court of Record of Dade County. The trial court directly passed

upon the validity of a State statute and we, therefore, have jurisdiction.

Defendants are charged with having violated Fla. Stat. §798.05[1] in that "the said Dewey McLaughlin, being a negro man, and the said Connie Hoffman, being a white woman, who were not married to each other did habitually live in and occupy in the nighttime the same room." The defendants moved to quash the information on the ground that the aforesaid statute was in violation of the Federal and State Constitutions. The motions were denied. Defendants were then arraigned and entered pleas of not guilty. The jury trial terminated in a verdict of guilty, a sentence of thirty days in the county jail and a fine of $150 for each defendant.

The defendants contend they were denied equal protection of the laws because "Firstly, the law provides a special criminal prohibition on cohabitation solely for persons who are of different races; or, secondly, if this special statute is equated with the general fornication statute, the higher penalties are imposed on the person whose races differ than would be applicable to persons of the same race who commit the same acts."

In Pace vs. Alabama,[2] the Supreme Court of the United States upheld an Alabama Statute[3] prohibiting interracial marriage, adultery or fornication, against the contention

---

1 Fla. Stat. §798.05

"Any negro man and white woman, or any white man and negro woman, who are not married to each other, who shall habitually live in and occupy in the nighttime the same room shall be punished by imprisonment not exceeding twelve months, or by fine not exceeding five hundred dollars."

2 106 U. S. 207 (1883).

3 Ala. Code of 1876, §4189 (now Ala. Code, Title 14, §360 [1958]).

that it denied equal protection of the law. Another Alabama Statute[4] prohibited adultery or fornication between members of the same race but provided a less severe maximum penalty. The Supreme Court speaking through Mr. Justice Field held:

> "Equality of protection under the laws implies not only accessibility by each one, whatever his race, on the same terms with others, to the courts of the country for the security of his person and property, but that in the administration of criminal justice he shall not be subjected, for the same offense, to any greater or different punishment . . .
>
> "The defect in the argument of counsel, consists in his assumption that any discrimination is made by the laws of Alabama in the punishment (sic) provided for the offense for which the plaintiff in error was indicted, when committed by a person of the African race and when committed by a white person. The two sections of the Code cited are entirely consistent. The one prescribes, generally, a punishment for an offense committed between persons of different sexes; the other prescribes punishment for an offense which can only be committed where the two sexes are of different races. There is in neither section any discrimination against either race. Section 4184 equally includes the offense when the persons of the two sexes are both white and when they are both black. Section 4189 applies the same punishment to both offenders, the white and the black. Indeed, the offense against which this latter section is aimed cannot be committed without involving the persons of both races in the same punishment.

---

4 Ala. Code of 1876, §4184 (now Ala. Code, Title 14, §16 [1958]).

> Whatever discrimination is made in the punishment prescribed in the two sections is directed against the offense designated and not against the person of any particular color or race. The punishment of each offending person, whether white or black, is the same."

The appellants seek adjudication of their right to engage in integrated illicit cohabitation upon the same terms as are imposed upon the segregated lapse. But, as was admitted by counsel in argument, this appeal is a mere way station on the route to the United States Supreme Court where defendants hope that, in the light of supposed social and political advances, they may find legal endorsement of their ambitions.

This Court is obligated by the sound rule of stare decisis and the precedent of the well written decision in Pace, supra. The Federal Constitution, as it was when construed by the United States Supreme Court in that case, is quite adequate but if the new-found concept of "social justice" has out-dated "the law of the land" as therein announced and, by way of consequence, some new law is necessary, it must be enacted by legislative process or some other court must write it.

Affirmed.

ROBERTS, *C.J.*, TERRELL, THOMAS, THORNAL and O'CONNELL, *JJ.*, concurring. DREW, *J.*, agrees to judgment.

Final Judgment Denying Rehearing

IN THE
SUPREME COURT OF FLORIDA

January Term, A.D. 1963

Thursday, May 30, A.D. 1963

Case No. 31,906

DEWEY MCLAUGHLIN and
CONNIE HOFFMAN also
known as CONNIE GONZALEZ,

Appellants,

—v.—

STATE OF FLORIDA,

Appellee.

On consideration of the Petition for Rehearing filed by Attorneys for Appellants,

IT IS ORDERED by the Court that the said petition be, and the same is hereby, denied.

A True Copy,

Test:

GUYTE P. MCCORD
Clerk Supreme Court

(The Mandate From This Court Has Today Been Issued and Mailed to the Clerk of the Criminal Court of Record for Dade County)

MARYLAND FREEDOM LABOR UNION, 1965-1966

Box 45
Folder 20

Please Retain Original Order

I Is the Maryland Freedom Union a labor organization for purposes of the NLRA?

(A) NLRA – Applicable Sections

1- "Sect. 2(4) – Representatives

The term "representatives" includes any individual or labor organization."

2- "Sect. 2(5) – Labor Organization

The term "labor organization" means any organization, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

(B) Characteristics or lack thereof

1- Employee participation –

a) In determining this aspect, the NLRB is not limited to investigating employees of a particular employer but may extend to the whole composition of the union.

<u>National Maritime Union of Amer. v NLRB</u>
274 F2d 167, 39 L.C. 66,141 (2nd Cir. 1960)

2- Absence of <u>Constitution or by-laws</u> –

a) The absence of a constitution or by-laws does not preclude the existence of a labor organization if the statutory definition is met.

<u>Stewart Warner Co</u>
123 NLRB 447 (1959).

3- Absence of officers, dues or eligibilty rules or provisions for meetings.

a) The absence of the above does not disqualify a labor organization under the NLRA.

Pacemaker Corp,
260 F2d 880, 36 LC 65,006 (7th Cir 1958)

4- Absence of formal internal organization

a) The absence of the above does not disqualify a labor organization under the NLRA.

Industrial Collieries Corp
65 NLRB 683 (1946)

5- Failure to qualify or register under state law [no Maryland State provisions] does not disqualify labor organization

Alabama Textile Products Corp.
73 NLRB 1192 (1947)

6- Failure to meet or collect dues for many months did not impair status where union was in early stages of development and did not receive funds from "outside sources."

Retail Clerks
153 NLRB #15 (1965)

II. Procedure for Recognition — Contract due to Expire

(A) Alternatives Available

1- demand for recognition

2- filing of petition for election with National Labor Relations Board.

(B) Demand for Recognition

1- No particular words are necessary

2- This is merely a written demand to the employer stating that the MFU represents a majority of the employees and wishes to begin negotiations on a new collective bargaining agreement. This demand may or may not be accompanied by an indication of such a majority in the form of authorization cards.

(C) Petition for Election

1- The petition need <u>not</u> be preceeded by a demand for recognition

2- It must be filed with the NLRB not before 90 nor after 60 days prior to the expiration of the contract now in effect.

3- Conditions necessary for an election petition:

a) the activities or business operations of the employer must <u>affect commerce</u>

b) a <u>question concerning representation</u> must exist

c) there must be an <u>appropriate bargaining unit</u>

continued

d) if filed by an individual or a labor organization, there must be showing of 30% or more

4- The "affecting commerce" test —
a) required by Sect 9(c)(1) of NLRA.
b) Board decides if it will take jurisdiction according to certain published jurisdictional yardsticks. A copy of these yardsticks can be found at Paragraph 1610 of Vol I of the CCH Labor Relations Reporter

5- The "Question Concerning Representation" test
a) required by Sect. 9(c)(1) of NLRA
b) a question concerning representation (QCR) is raised by the filing of an election petition. If the employer refuses to recognize the petitioner at the pre-election hearing, the QCR test is met.
c) NOTE: though the election petition must allege a 30% showing if filed by a labor organization, the 30% showing is not needed to meet the QCR test

6- The "Unit Must be Appropriate" test
a) required by Sect. 9(b)
b) the appropriate unit is determined by Sect 9(b) which provides "that the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."

(continued)

c) Section 9(b) precludes including professional employees in a non-professional unit unless a majority of the professionals vote for inclusion

d) Section 9(b) prohibits deciding that a craft unit is not appropriate because of a prior administrative decision.

e) Section 9(b) prohibits including plant guards in the same unit with other employees.

b) For full discussion of appropriate unit test, see Para. 2601 of Vol 2 of CCH Labor Relations Reporter.

7- The "Showing of 30% Interest" Test —

a) required by administrative ruling of NLRB

b) This showing must be submitted within 48 hours after the filing of the petition but in no event later than the last day on which the petition could have been filed

c) Type of proof required:

(1) authorization cards
(2) membership cards
(3) dues receipts
(4) dues record book
(5) petitions signed by employees

8- Procedure for filing election petition:

a) obtain form NLRB-502 (copy enclosed) from Maryland Regional Office located at 707 N. Calvert St., Baltimore, Maryland (6th floor). Telephone: Plaza 2-8460.

b) Maryland Regional Director is John A. Penello. Regional Attorney is David C. Sachs.

c) This petition must be filled out in an original and 4 copies and must be notarized.

III Applicability of the Labor-Management Reporting and Disclosure Act (LMRDA).

1- According to the LMRDA, any labor organization "engaged in an industry affecting commerce ... for the purpose ... of dealing with employers concerning grievances, labor disputes, wages, ..." must comply with the provisions of the Act.

2- A labor organization is "affecting commerce" if it has been certified, recognized by an employer engaged in an industry affecting commerce or if it has been chartered for the purpose of representing employees engaged in an industry affecting commerce.

(A) What is required under the Act?

1- Union must adopt a <u>constitution</u> and <u>by-laws</u> and must file copies of the above with the Secretary of Labor.

2- Union must file a report on its administrative policies which can accomplished by filling out form LM-1.

3- Union must file a financial statement which can be accomplished by filling out form LM-2 (for union's whose annual gross receipts totals $30,000 or more) or form LM-3 (for less than $30,000).

4- Both the financial and policy statements must be signed by the union president <u>and</u> treasurer or corresponding officers

5- The initial report on administrative policies + the constitution and by-laws

must be filed with the Secretary of Labor within 90 days after the union becomes subject to the act. The financial report must be filed within 90 days after the end of each fiscal year.

a) NOTE: The policies report need only be filed once; however, any changes must be reported when the next financial report is filed.

6- Mail the above information to:

Office of Labor Management and Welfare-Pension Reports
U.S Department of Labor
Washington, 25 D.C

7- For complete discussion of LMRDA see Para. 7302 of Vol 3 of CCH Labor Relations Reporter.

8- There are NO STATE FILING REQUIREMENTS IN MARYLAND.

IV Application of Contract-Bar — 4 contracts still in effect

1- Contract-bar rule prohibits election during the term of a collective bargaining contract.

2- The contract-bar rule, however, will prevent an election for a maximum of 3 years.

General Cable Corp 139 NLRB 1123 (1962)

(A) Exceptions to Contract-bar Rule — Hershey Chocolate Rule

1- Where there is schism within a union, an existing contract will not bar an election

2- The Hershey Chocolate rule, however, states that a schism requires a conflict within the union which creates confusion and which arises in the context of a basic intraunion conflict "at the national level."

Hershey Chocolate Co
49 LRRM 2173

3- In interpreting the term "national level", the Board has consistently held that a mere disagreement culminating in disaffiliation does not constitute a schism for purposes of defeating the contract-bar rule.

a) In Swift and Co, 145 NLRB #73 (1963), the employer claimed he could not continue his business operations unless certain reductions were made. The employees were willing but the International refused to modify the contract. In light of this conflict, the union voted to disaffiliate. The Board ruled this was not a schism since it was not a conflict at the national level

and permitted the contract to bar an election. The Board reached this decision even though the petitioner argued that industrial stability would be hampered should the employer be forced to close down his operations.

b) The only evidence of displeasure over this aspect of the Hershey Chocolate rule occured in a decision handed by the Second Circuit Court of Appeals in 1964. In Harbor Carriers of the Port of NY v NLRB, 306 F2d 89 (2nd Cir. 1964), the Board and subsequently the Court was faced with a situation similar to facts in the case at bar. This case, however, turned on a charge of a refusal to bargain brought by the disaffiliated local. In sending the case back to the Board, the Court stated in reference to the schism doctrine, "Since a division at the local level, such as we have in the present case, [disaffiliation with national + affiliation with new body] unconnected with a national split, may well be as destructive of the stability of labor relations in the industry as would be a division consequent upon a basic intraunion conflict, it is possible that the Board has confined its policy of allowing an election to choose new representatives to too narrow an area."

It must be noted that this passage was merely dicta in a decision not directly concerned with the contract-bar and schism issue.

This argument, however, may form the basis of an interesting argument before

the Board to seek a change in the "national level" aspect of the Hershey Chocolate rule.

(B) Other exceptions to contract-bar rule

1- Defunctness of Union

a) This cannot be pleaded since the Union (International) is "ready, willing, and able" to administer the contract. Clearly, they are functioning as a labor organization

2. Illegal union-security contract provisions

a) Such provisions do not seem to be present

(C) Possible avenues of approach

1- Racial discrimination in handling of local by the international → local unable to represent employees fairly → violation of 9(a) of NLRA → decertification OR waiver of contract-bar in case of strong public policy

2- Company dominated union → dissolution of union

a) See McClellan Committee First Interim Report — March 1958 reported at Para 7303 of Vol 3 of CCH Labor Relations Reporter. Recognizes existence of sweetheart contracts, collusion, connivance, under-the-table agreements. Union may be selling the employees short & thereby violating NLRA duty to represent employees fairly

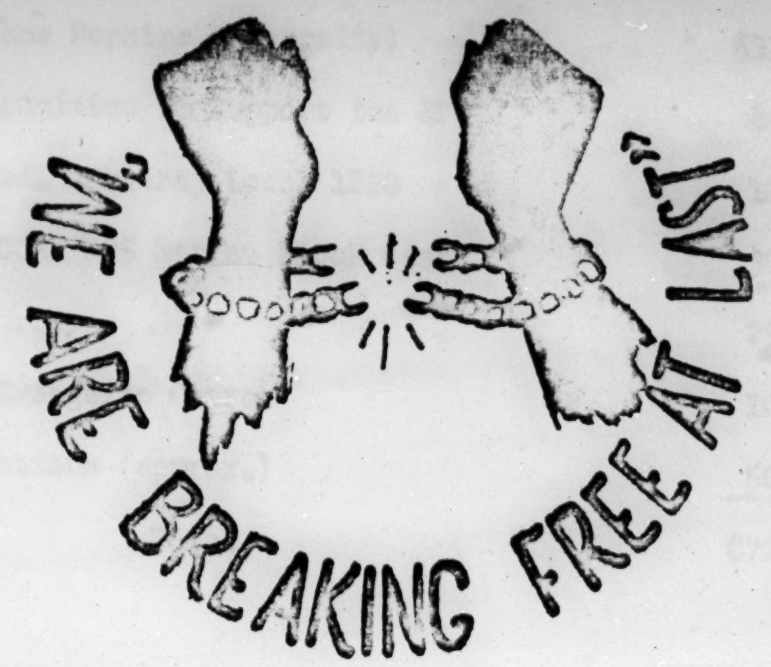
equally, and impartially.

Excessive length and increase provisions and management rights clauses may indicate existence of sweetheart contracts.

MARYLAND FREEDOM UNION

322 N. SCHROEDER STREET
BALTIMORE, MARYLAND 21223

233-8776
AREA CODE 301



MR 1 2 '66

6 March 1966

Employment Without Representation is Slavery

TO: Herbert Callender, Director of Organization, National CORE
FROM: Vivian Jones, President

Subject: Financial irresponsibility of Anthony Riley

1. Anthony Riley, field secretary for CORE was chief organizer for the Maryland Freedom Union from 9 February to 28 March 1966. During much of this period, he handled the funds of the MFU in lieu of a formal bookkeeping system. The transfer of funds to an account in the name of the Maryland Freedom Union was accomplished on 25 March. Mr. Riley stated that the amount transferred was one hundred and eighty dollars ($180.00), but on further inspection, it was discovered that the actual amount transferred was ten dollars and forty-three cents ($10.43). An audit of the accounts was held this date, but is only approximate due to the poor bookkeeping methods of Mr. Riley.

2. Approximate income of the Maryland Freedom Union for period 9 February to 25 March 1966:

Fund-raising party	$78.00
United Auto Workers	25.00
Peace and Freedom Rally	62.00
General church solicitations	45.00

(next page)

Rally (Johns Hopkins University)	$33.00
Student Committee to Support the MFU	86.00
United Steel Workers, Local 1220	10.00
Columbia CORE/105 Street Block Assn.	305.00
Rev. C. Murray	25.00
Lutheran Evangelic Church	10.00
Misc. donations (approx.)	50.00
Total	$729.00

3. Approximate expenditures during this period:

Auto rental	$50.00
Rent (MFU office/house)	38.00
Office supplies	12.41
Fuel (for MFU headquarters)	39.60
Fuel deposit	75.00
Refrigerator (for MFU headquarters)	15.00
Furniture (for staff accomodations)	50.00
Typewriter rental	7.00
Laundry expenses (for MFU staff)	5.00
Cleaning utencils (for MFU headquarters)	30.00
Food (for MFU staff)	100.00
Total	422.01

4. Bills (outstanding) incurred by Mr. Riley during this period:

Auto rental	$233.00
Auto repair (Personal auto, owed to Balto. CORE)	185.00
Telephone (Personal long distance calls)*	29.21
Total	$447.21

5. It is requested that funds due Mr. Riley from CORE be held up until legal action can be initiated by the Maryland Freedom Union.

Yours for Equality,

Vivian Jones

Vivian Jones,
President

*NOTE: Copy of "Calls and Telegrams" portion of telephone bill attached.

CALLS AND TELEGRAMS

BILLING NUMBER: 233-8776 Dialed calls:* Page 1

DATE	PLACE CALLED	AREA	PHONE NO.	AMOUNT
3/07	*NEW YORK, NY	212	222-0092	$1.70
3/07	*NEW YORK, NY	212	267-6271	.70
3/07	*NEW YORK, NY	212	267-6271	.70
3/07	*NEW YORK, NY	212	267-6271	2.90
3/07	*ROCHESTER, NY	716	328-7526	1.10
3/08	MEDFIELD, MASS.	617	359-4312	2.15
3/11	*NEW YORK, NY	212	267-6270	1.10
3/11	*NEW YORK, NY	212	267-6270	3.70
3/11	*NEW YORK, NY	212	222-0092	1.30
3/11	*NEW YORK, NY	212	864-2054	.55
3/11	*NEW YORK, NY	212	864-2054	.55
3/17	*ROCHESTER, NY	716	328-7526	.70
3/18	FROM ENDICT, NY	[illegible]	754-1270	1.15
3/19	FROM ENDICT, NY		754-1270	1.20
			Page 2	
3/22	NEW YORK, NY	212	267-6270	1.30
3/22	FROM ENDICT, NY		754-1270	2.20
3/26	*NEW YORK, NY	212	533-3664	2.95
3/28	*ROCHESTER, NY	716	328-7526	.60
FED. TAXES: $2.66	TOTAL CARRIED TO BILL			$29.21

Carl!

The areas that has a pencil enclosure presents some questions that should be dealt with

Walter

LEXINGTON 9-4151

LAW OFFICES
JACOB BLUM
10 LIGHT STREET
BALTIMORE 2, MD.

RECEIVED
JUL 21 1966

July 20, 1966

The Honorable Joseph Allen
City Solicitor
Tower Building
Baltimore, Maryland 21202

Dear Judge Allen:

This will confirm my conversation with you on the telephone today and so that there will be no misunderstanding as to the proposal, I am repeating it in writing.

At a meeting last night the vast majority of the owners of stores present agreed that in the future where CORE believes it has a majority of the employees of an individual store signed for representation purposes then CORE may request the owner of that store to collectively bargain. The owner of that store if he desires proof of the union's majority will immediately consent to a speedy election to be held under the auspices of a mutually satisfactory neutral party.

In the event that the union wins the election, the store owner involved will immediately sign a recognition agreement and arrange for good faith collective bargaining, such bargaining to continue for one month if necessary to reach an agreement. ?

In the event the union loses the election, it is to withdraw any further activities directed at that store and will make no further efforts to secure recognition for a period of one year. ? All references to CORE in this letter shall apply equally to the Maryland Freedom Union or any other affiliate or organization interested in the same results as either CORE or the Maryland Freedom Union. The merchants in exchange for this proposal will require that CORE and all affiliates as above will refrain from any demonstrations of any nature or picketing directed at any of the stores affected at any time from the date of this agreement to the end of the bargaining period. ?

In the event of a failure to reach an agreement once

recognition is granted, lawful picketing will be directed only against the employer from whom the union has failed to secure the contract after the prescribed bargaining period.

There were only two store owners present at the meeting who have dissented from this proposal. I am not at liberty to divulge their names for fear of reprisal.

Very truly yours,

JACOB BLUM

JB:bkb

cc: General George Gelston

AUG 1 - 1966

Maryland Freedom Union
905 West North Avenue

Dear Carl,

Here are the demands of the workers at Tommy Tuckers Incorporated.

Wages;

1. full time sales people, open 1.75 an hour, not less than 1.50.
2. Part time sales people 1.50, not less than 1.25.
3. Stock clerks and porters 1.75 not less than 1.50.
4. Stock manager 1.25 per week not less than 1.00.
5. Office clerical 2.00 not less than 1.75.

Hours;

1. overtime, time and a half over 40 hours.
2. guaranteed full time, 40 hour guarantee
   a. twenty sales people
   b. two stock room
   c. one clerical

Vacations

1. 1 week after one year
2. 2 weeks after two years

Holidays;

1. 6 paid legal holidays
2. sick leaveopen with ten days notless than five.
3. Lunch one hour unpaid.

Grievance procedure is the same as Silverman Contract.

Union Security, wants union shop and check-off system.

Reinstatement of Thomas Massenberg.

Negotiation will be held 7:30 P.M. at Jocob Blum's Office.

Please go to office of Weisgal and Albert when you arrive in Baltimore. Thanks for everything.

Sincerely,

Walter Brooks

Walter Brooks
C.O.R.E. Project City

Micheal Flugg
M.F.U.

RECOGNITION AGREEMENT

FIRST CLAUSE

Tommy Tucker Stores, Inc. hereby agrees to recognize the Maryland Freedom Union as the sole and exclusive bargaining agent for the following categories of employment at its store located at 1713 Pennsylvania Avenue: sales clerk, office clerical, stock clerk, marking clerk, and stock manager. This agreement exempts from coverage in the bargaining unit all supervisory personnel, unless specifically named in the preceding language, and in addition exempts all employees related to the owners of Tommy Tucker Stores, Inc. to any degree of kinship.

SECOND CLAUSE

Tommy Tucker Stores, Inc. further agrees that there shall be no discrimination against any employee on the basis of union activity or union membership at its store located at 1713 Pennsylvania Avenue.

THIRD CLAUSE

The Maryland Freedom Union hereby agrees that there shall be no recognition picketing at any of the Tommy Tucker Stores.

FOURTH CLAUSE

Tommy Tucker Stores, Inc. and the Maryland Freedom Union jointly agree to begin negotiations in good faith with the purpose of signing a contract covering the employees named in the bargaining unit which is acceptable to both parties.

WITNESS _____ FOR TOMMY TUCKER STORES, INC.

WITNESS _____ FOR THE MARYLAND FREEDOM UNION

Copy of Telegram

As an employee of Tommy Tucker Inc. you will please come to St. Peter Claver Church, Fremont and Pennsylvania Aves. on Wednesday, July 12th between the hours of 9 A.M. and 1:30 P.M. to vote on whether or not you want the Maryland Freedom Union to represent you in bargaining with your employer on wage and conditions of employment. If you are scheduled to work that day, you will please vote before 10 A.M.

Dated July 11th 1966

Maryland Freedom Union
by _____
Secretary

Tommy Tucker Inc
by _____
Vice. Pres.

1) Memorandum of Agreement between Maryland Freedom Union and Tommy Tucker Inc.

1. An election is to be held under the auspices of the Md. Dept. of Labor and industry to determine whether a majority of the employees of Tommy Tucker Inc. designate the Maryland Freedom Union as their agent to bargain with the employer on wage and conditions of employment.

2. The election is to be held on Wed. July 13th between the hours of 9 AM and 1:30 P.M. at St. Peter Claver's Church, Fremont & Pennsylvania Ave

3. Major Wm. A. Harris and City Solicitor Joseph Allen will send telegram to all employees of Tommy Tucker Inc advising them of the time and place of the election. The telegram is to read substantially as per attached copy.

4. A pre-election conference will be held on Wed. July 13th at 8 AM at said Church to discuss eligibility of employees to vote. The Commissioner of Labor and Industry is authorized to rule on any challenged ballot.

5. Pending the election and the negotiations of contract terms, if any, which may follow the election, there shall be no picketing or demonstrations. The employer agrees

of the election is in favor of the union, to sign the recognition agreement heretofore submitted by the union and to bargain in good faith. There shall be no discriminatory lay-offs or reduction in wages pending the election and said negotiations.

6. Tommy Tucker Inc. will dismiss its Bill for Injunction filed in the Circuit Court of Baltimore City and the Union will file, if necessary, an order to dismiss its petition for removal of the said injunction suit to the U.S. Dist. Court of Md.

Maryland Freedom Union
by Olle Johnson
Secretary

Tommy Tucker Inc.
by M. Stanley Samuelson
Vice-Pres.

Plants	Employees
CENTRAL COAT	67
ARCHER	128
ARISTOCRAT	66
BUGLE	250
BALTO. TOWEL	40

Bst 1970

AFL-CIO LAUNDRY AND DRY CLEANING INTERNATIONAL UNION

LOCAL 195

AGREEMENT

MADE THIS FIRST DAY OF AUGUST, 1964 BY AND BETWEEN AFL-CIO LAUNDRY AND DRY CLEANING INTERNATIONAL UNION LOCAL 195, party of the first part, and hereinafter referred to as the "UNION"

AND

CENTRAL COAT AND APRON SUPPLY, INC.

WITNESSETH

In consideration of the mutual benefits to be derived by the parties of the first part and second part hereto by the adoption and execution of this Agreement and further, in consideration of the agreements and stipulations made herein, the said parties have agreed as follows:

1. UNION RECOGNITION

1. The Company recognizes the Union as the sole and exclusive agency to bargain collectively for the purpose of establishing rates of pay, hours of work and other conditions of employment for all the employees engaged in laundry, cleaning, dyeing and other production work covered by this Agreement, and over which the Union has jurisdiction.

2. EMPLOYMENT

2.1 The Company agrees that any person employed in any of the classifications covered by this Agreement who is a member of the Union in good standing on the effective date of this Agreement shall, as a condition of employment, maintain membership in the Union to the extent of paying the initiation fees and the periodic dues uniformly required of all Union members.

2.2 The Company agrees that any person employed in any of the classifications covered by this Agreement, who, on the effective date of this Agreement, is not a member in good standing in said Union, shall, as a condition of employment, become a member of said Union thirty (30) days after the effective date of this Agreement.

2.3 New employees shall be considered to be probationary employees for a period of sixty (60) days during which they shall have no seniority, but shall enjoy and be bound by all of the provisions of this Agreement. If such employees are retained beyond the probationary period, they shall, as a condition of continued employment, immediately become members of the Union, and maintain membership in the Union to the extent of paying the initiation fees and the periodic dues uniformly required of all Union members, and their seniority shall then relate back to the date of employment.

2.4 It is agreed that all employees who are members of the Union must keep themselves in good standing, and in the event the Company receives notice from the Union that any employee is not in good standing, because of non-payment of dues and initiation fees, the Employer shall upon the request of the Union in writing, lay-off or suspend such employee.

2.5 The Company agrees to notify the Union on or about the first business day of each month of all newly hired employees the preceding month by sending the Secretary-Treasurer of the Union the names, addresses, dates of employment, and the departments assigned said newly hired employees.

2.6 Foremen and foreladies, who do not have the right to hire or fire, and who perform work under the jurisdiction of the Union, shall be covered by this Agreement and must, as a condition of employment, become a member of the Union and maintain membership in good standing in the Union as all other employees covered by this Agreement.

3. WAGES

3.1 The wage increases and rates for all employees covered by this Agreement are set forth in Schedule "A" and "B" attached.

3.2 There shall be no reduction in the wages, hourly or piecework rate of any employee from the date of this Agreement, notwithstanding that the employee is or shall be paid at a scale above the minimum herein provided. Nor shall a reduction be affected by changing the employee from a weekly to an hourly or piecework rate or vice versa.

3.3 Any employee required to do work outside of his regular classification in a lower rated classification shall, nevertheless, receive his regular classification rate of pay for all time he so works. However, any employee doing work in a classification higher than his regular classification shall receive the higher rate of pay for the time actually worked in such higher classification and every fraction of an hour so worked shall be considered as a full hour.

Wants Head Washman excluded
same for girl in charge of Linen Room

3.4 There shall not be introduced in any plant any new system of bonuses, premiums, or production incentives unless the Company first gives the Union thirty (30) days notice in writing of the proposed new system. The Union and the Company shall then collaborate on said new system, and, if unable to agree, arbitration shall be resorted to. The Union recognizes the right of the Company to modernize or change the method of operation by installing new machinery. In the event a new type of machinery is installed by the Company, after said machinery has been in use two (2) calendar months, the Union and the Company shall determine whether the rates of pay of employees operating the said machinery shall be adjusted. If an adjustment cannot be agreed upon, the matter shall be arbitrated as herein provided.

4. ADDITIONAL WAGE AND HOUR REGULATIONS

4.1 Regular hours of work for employees shall be forty (40) hours per week, All work performed over forty (40) hours per week shall be at the rate of time and one-half. All overtime provisions shall be applicable to bonus and piece work rate workers.

4.2 No split shifts will be allowed and each daily schedule of employment shall consist of consecutive hours of work with the exception of time-off for a lunch period.

4.3 An employee reporting for work as usually scheduled, without receiving advance notice to the contrary, shall be guaranteed at least four (4) hours work or four (4) hours pay at his regular hourly rate of pay, unless an emergency occurs beyond the control of the employer.

4.4 All employees shall be paid weekly within three (3) days after the close of the week.

4.5 The Company agrees to divide all overtime work in each department as equally as possible between the employees of said department.

5. HOLIDAYS

1. The Company will pay for six (6) holidays in the year; namely, New Years Day, Decoration Day, Fourth of July, Labor Day, Thanksgiving and Christmas Day, subject to the following conditions:

(a) The holiday pay shall be on the basis of eight (8) hours at the employee's regular rate of pay;

(b) The above provisions for paid holidays shall be effective, not withstanding that the paid holiday provided for falls on a Saturday or Sunday. Sunday holidays shall be celebrated on Monday;

Has always paid double time - does not want to pay 2½ times.

(c) Employees required to work on a holiday shall be paid at the rate of time and one-half for all hours worked, in addition to their holiday pay.

discussed with Sam

This language is not to be construed as a guarantee of 40 hrs. when work is not available.

(d) Any employee must be in the employ of that respective plant for a period of sixty (60) days prior to any paid holiday in order to be eligible to receive holiday pay.

(e) An employee must work the day before the holiday, the day after the holiday, and on the holiday, if scheduled, to be eligible for holiday pay.

6. VACATIONS

1. Paid vacations shall be granted as provided below:

(a) Every employee who has completed one (1) year continuous employment shall be entitled to one (1) week vacation with pay.

(b) Every employee who has completed five (5) years continuous employment shall be entitled to two (2) weeks vacation with two (2) weeks pay.

(c) Vacation pay for those employed one (1) year shall be determined by taking the preceding year's wages, ending as of the employee's anniversary date, and dividing by 48.

(d) Vacation pay for an employee eligible for two (2) weeks vacation pay shall be determined by taking the preceding year's wages ending as of March 31st, including previous vacation pay, and dividing by 24.

(e) Eligibility for employees' vacations shall be determined as of the anniversary date and shall be given during the vacation period provided in the contract.

(f) The vacation period shall be between April 1 and October 30 of each year. On March 1, there shall be distributed throughout the plant by the shop steward, a vacation schedule on which the employee shall designate, according to departmental seniority, the period during which the vacation is desired. The schedule shall be completed on or before March 8, and on that date, it shall be submitted to the Company. On or before March 15, the Company shall return the said schedule to the shop steward and shall indicate any change desired by the Company by reason of hardship or difficulty that the said schedule may impose upon the Company. Changes made by the Company shall be subject to investigation by the Union. The vacation schedule shall be finally determined on or before March 28, and shall be posted upon the bulletin board.

(g) An employee taking his vacation during a period which includes a paid holiday, must be paid for said holiday, in addition to his vacation pay.

- Pay in advance of vacation -

7. SENIORITY

7.1 The Company agrees to file with the Union within one (1) week after execution of this Agreement, a list containing the names and addresses of all employees covered by this Agreement with their length of service with the Company, and in the department in which they are employed in departmental seniority order.

7.2 Seniority is based on length of service regular employees have with the Company. Each employee shall have departmental seniority based on length of service in said department. Seniority shall be accumulated during absence due to illness, accidents occurring in the course of regular employment for the Company, and pregnancy. However, in maternity cases, the employee must be available to work within three (3) months after the termination of pregnancy.

7.3 Seniority shall prevail when it becomes necessary to reduce the working force, and, when it becomes necessary to increase the working force, those employees laid off shall be reemployed in order of their seniority. The Company shall not hire any new employees as long as there are furloughed employees who have not been recalled from furlough or layoff.

7.4 In all cases of promotion, and if filling vacancies, departmental seniority rights shall first be exercised before Company seniority rights are recognized.

8. HEALTH AND SAFETY

8.1 The Company agrees that all premises wherein the employees shall work will be adequately ventilated.

8.2 The Company shall provide adequate, proper, comfortable and sanitary facilities for eating purposes, as well as adequate, proper, confortable and sanitary facilities for dressing and rest room purposes which shall include towels, soap, and a cot with clean sheets, pillows and pillow cases.

8.3 The Company shall comply with all health and sanitary regulations of the State of Maryland.

8.4 The parties hereto agree that during the term of this Agreement, the Shop Committee and representative of management will meet for the purposes of discussing and improving working conditions. It is understood, that such meetings will be held immediately upon request of either party. However, these meetings shall not be held during working hours.

8.5 Where uniforms are required to be worn by the employees, such uniforms shall be furnished by the Company and shall be laundered and mended at the Company's expense.

9. CHECK-OFF

9.1 The Company will check-off such monthly dues and initiation fees as shall be designated by the Secretary-Treasurer of the Union uniformly required of all Union members on the basis of individually signed voluntary check-off authorization cards in forms agreed to by the Company and the Union worded substantially as follows:

> "Pursuant to this authorization and assignment, please deduct from my pay, while I am in employment within the collective bargaining unit in the Company, dues, assessments and initiation fee each as designated by the Secretary-Treasurer of the Union, as my membership dues in said Union.
>
> The aforesaid membership dues shall be remitted promptly by you to the Secretary-Treasurer of the AFL-CIO Laundry and Dry Cleaning International Union _____ or its successor.
>
> This assignment and authorization shall be effective and cannot be cancelled for a period of one (1) year from the date appearing above or until the termination date of the current collective bargaining agreement between the Company and the Union, whichever occurs sooner.
>
> I hereby voluntarily authorize you to continue the above authorization and assignment in effect after the expiration of the shorter of the periods above specified, for further successive periods of one (1) year from such date. I agree that this authorization and assignment shall become effective and cannot be cancelled by me during any of such years, but that I may cancel and revoke by giving to the appropriate management representative of the plant in which I am then employed, an individual written notice signed by me and which shall be postmarked or received by the Company within fifteen days following the expiration of any such year or within the fifteen days following the termination date of any collective bargaining agreement between the Company and the Union covering my employment if such date shall occur within one of such annual periods. Such notice of revocation shall become effective respecting the dues for the month following the month in which such written notice is given; a copy of any such notice will be given by me to the Secretary-Treasurer of the Local."

9.2 Deductions on the basis of authorization cards submitted to the Company shall commence, with respect to the dues, in the month in which the Company receives such authorization card or in which such card becomes effective, whichever is later. Dues for a month shall be deducted from the first pay each employee is to receive for said month.

10. STRIKES AND LOCKOUTS

10.1 There shall be no strike, slowdown, picketing, boycott or other interference or interruption to the normal conduct of the company's business by the Union, its members or representatives, during the term of this Agreement and the Company will not lockout its employees.

10.2 It shall not be deemed a breach of this Agreement for any employee to refuse to go through a picket line or to work in any place where there is a labor dispute unless he is ordered to do so by the Union.

11. UNION ACTIVITIES AND GRIEVANCE MACHINERY

11.1 The Union shall advise the Company of the person and persons, either appointed or elected by the Union or the employees, as a Shop Steward and Grievance Committee, and the Company agrees to meet with said Shop Steward and Grievance Committee for the purposes of ascertaining the facts concerning complaints or grievances, and the presentation of such complaints or grievances employees may have. However, these meetings shall not be held during working hours.

11.2 The Company agrees that it will not discriminate against any employee for Union activities or for reporting any violation of this Agreement.

11.3 Representatives of the Union shall have access to the Company's place of business, and shall be given every opportunity to investigate whether the terms of this Agreement are being observed, including the right to inspect the Company's payroll and time records. However, in the event that the Union desires to check the aforesaid payroll and time records of the Company's employees, it must give prior notice to the Company of its desire to do so.

11.4 All complaints or grievances shall first be taken up by the Steward and/or Grievance Committee with the representative of the Company. If the Steward and/or Grievance Committee and Company representative are unable to adjust said grievance, the Business Agent or officer of the Union shall try to adjust said grievance with the representative of the Company.

11.5 In the event the Union representative and the Company representative cannot adjust a grievance or dispute within a reasonable time, the matter shall then be referred to the Maryland State Commission of Labor for arbitration.

11.6 It is agreed between the parties that the only matters subject to arbitration shall be any and all disputes growing out of the interpretation, construction and application of the terms of this Contract.

12. MANAGEMENT

12.1 The management of the business and the direction of the employees of the Company, including the right to hire under the terms hereof, discipline, suspend or discharge for proper cause, or transfer, and the right to relieve employees from duty because of reasons, is vested exclusively in the Company, provided that the Union shall have the right to investigate such action; provided, further, that the within paragraph shall be subject to the provisions of the within Agreement including the provisions for Arbitrarion.

13. DISCHARGE

13.1 The Company shall give the Union written notice as to any employee who is being discharged, and the reasons therefore. A copy of the written notice shall be furnished to the discharged employee and to the Union Shop Steward at the time of discharge.

13.2 It is acknowledged that intoxication or theft shall constitute good cause for discharge.

14. GENERAL PROVISIONS

14.1 In the event there appears to be a misunderstanding as to the supervision of any or all of the employees covered by this Agreement, upon request of the Union, the Company agrees to furnish in writing the names of any such supervisory employees and the extent of his or their authority.

14.2 The Company agrees that it will not enter into any written or verbal agreement with any of its employees covered by this Agreement, the provisions of which are inconsistent with or which, in any way, modify or waive any of the provisions of this Agreement. It is understood, however, that it shall not be inconsistent with or in violation of this Agreement for the employer to pay any rates of pay in excess of the wage schedules set forth herein.

will submit rules to union →

14.3 The Company shall have the right to promulgate a reasonable set of plant rules. Such rules can only become effective thirty (30) days after notice to the Union.

14.4 It is agreed by the parties that if any Federal, State or Municipal minimum wage law is enacted or amended requiring an increase in the wage rates of any employee covered by this Agreement such wage rate increase shall be chargeable against the schedule of wage increases as is set forth in this Agreement for such employee. It being the intention of the parties that if the legal minimum wage exceeds the wage being paid to an employee, the future wage increases provided for herein shall not be operative until the sum of increases equals the legal minimum wage rate as established or amended.

14.5 This Contract is the complete and entire understanding between the parties, custom and past practice to the contrary notwithstanding.

15. REST PERIODS

15.1 Each employee shall be given a ten (10) minute rest period every day.

16. SEPARABILITY

16.1 In the event any of the terms or provisions of this Agreement shall be or become invalid or unenforceable by reason of any Federal, State or Municipal law, directive, order, rule or regulation now existing or hereafter enacted or issued, or any decision of a court of last resort, such invalidity or unenforceability shall not affect or impair any other terms or provisions hereof.

17. TERM OF CONTRACT

17.1 The within Agreement shall be in full force and effective from the First Day of August 1964, until the Thirty-First Day of May, 1970, both dates inclusive, and shall continue thereafter from year to year unless thirty (30) days notice in writing be given by either party to the other, prior to the expiration date, of the desire to cancel, change, or modify said contract or any terms thereof.

17.2 In the event this Agreement terminates and the parties are unable to agree upon a new agreement, and by mutual agreement decide to continue negotiations beyond the termination period of this Agreement, the terms and conditions of this Contract shall be adhered to until a final agreement is reached. Upon agreement by both parties to a new Contract, it is agreed that the date of the new agreement shall be the expiration date of the old agreement, and all terms and conditions of the new agreement shall be retroactive to the expiration date of this Agreement.

IN WITNESS WHEREOF, the parties hereto intending to be legally bound hereby, have hereunto set their hands and seals the day and year first above written.

FOR THE COMPANY	FOR THE UNION
_____(SEAL)	_____(SEAL
_____(SEAL)	_____(SEAL)
_____(SEAL)	_____(SEAL)
_____(SEAL)	_____(SEAL)

SCHEDULE "A"

WAGE RATES AND INCREASES

The following schedule of wage rates and increases shall apply only to members hired on or before June 1, 1965.

All employees covered by this Agreement in the employ of the Company on or before June 1, 1965, shall receive the following wage increases:

August 1, 1964 - 5¢ per hour, or a minimum of .90¢ per hour

December 1, 1964 - 5¢ per hour, or a minimum of .95¢ per hour

March 1, 1965 - 5¢ per hour, or a minimum of $1.00 per hour

June 1, 1965 - 5¢ per hour, or a minimum of $1.05 per hour

June 1, 1966 - 5¢ per hour, or a minimum of $1.10 per hour

June 1, 1967 - 5¢ per hour, or a minimum of $1.15 per hour

June 1, 1968 - 5¢ per hour, or a minimum of $1.20 per hour

June 1, 1969 - 5¢ per hour, or a minimum of $1.25 per hour

Did not include in 1st week of Aug.
Will add to next weeks pay.

SCHEDULE "B"

WAGE RATES AND INCREASES

Schedule "B" of wage rates and increases shall apply only to employees hired after June 1, 1965.

All new employees employed by the Company after June 1, 1965, shall be paid a minimum of $1.05 per hour after sixty (60) days of their employment.

Employees shall be increased 5¢ per hour each year, on the anniversary date of their employment.

Dec 1968

AGREEMENT

MADE THIS 18th DAY OF December, 1964, BY AND BETWEEN AFL-CIO LAUNDRY AND DRY CLEANING INTERNATIONAL UNION, LOCAL 195. hereinafter referred to as the "UNION"

AND

BALTIMORE TOWEL SUPPLY AND LAUNDRY CO., INCORPORATED, hereinafter referred to as the "COMPANY"

WITNESSETH

In consideration of the mutual benefits to be derived by the parties hereto by the adoption and execution of this Agreement and further, in consideration of the agreements and stipulations made herein, the said parties have agreed as follows:

1. UNION RECOGNITION

1. The Company recognizes the Union as the sole and exclusive agency to bargain collectively for the purpose of establishing rates of pay, hours of work and other conditions of employment for all production and maintenance employees, driver-salesmen, and helpers at the Company's two locations, 107 S. Charles Street and 1101 Riverside Avenue, in Baltimore, Maryland; excluding all office clerical employees, professional employees, salesmen, supervisors, and guards as defined in the National Labor Relations Act, as amended, and temporary employees.

2. EMPLOYMENT

2.1. The Company agrees that any person employed in any of the classifications covered by this Agreement who is a member of the Union in good standing on the execution date of this Agreement shall, as a condition of employment, maintain membership in the Union to the extent of paying the initiation fees and the periodic dues uniformly required of all Union members.

2.2. The Company agrees that any person employed in any of the classifications covered by this Agreement, who, on the execution date of this Agreement, is not a member in good standing in said Union, shall, as a condition of employment, become a member of said Union thirty (30) days after the execution date of this Agreement.

2.3. New employees shall be considered to be probationary employees for a period of sixty (60) days during which they shall have no seniority, but shall enjoy and be bound by all of the provisions of this Agreement. If such employees are retained beyond the probationary period, they shall, as a condition of continued employment, immediately become members of the Union, and maintain

membership in the Union to the extent of paying the initiation fees and the periodic dues uniformly required of all Union members, and their seniority shall then relate back to the date of employment.

2.4. It is agreed that all employees who are members of the Union must keep themselves in good standing, and in the event the Company receives notice from the Union that any employee is not in good standing, because of non-payment of dues and initiation fees, the employer shall upon the request of the Union in writing, layoff or suspend such employee.

2.5. The Company agrees to notify the Union on or about the first business day of each month of all employees hired during the preceding month by sending the Secretary-Treasurer of the Union the names, addresses, dates of employment, and the departments assigned said newly hired employees.

2.6. Foremen and foreladies, who do not have the right to hire or fire, and who perform work under the jurisdiction of the Union, shall be covered by this Agreement and must, as a condition of employment, become a member of the Union and maintain membership in good standing in the Union as all other employees covered by this Agreement.

3. WAGES

3.1. The wage increases and rates for all employees covered by this Agreement are set forth in Schedule "A" and "B" attached.

3.2. There shall be no reduction in the wages, hourly or piecework rate of any employee as a result of this Agreement, notwithstanding that the employee is or shall be paid at a scale above the minimum herein provided. Nor shall a reduction be affected by changing the employee from a weekly to an hourly or piecework rate or vice versa.

3.3. Any employee required to do temporary work outside of his regular classification in a lower rated classification shall, nevertheless, receive his regular classification rate of pay for all time he so works. However, any employee doing temporary work in a classification higher than his regular classification shall receive the higher rate of pay for the time actually worked in such higher classification. If work is not available on his regular job, and an employee chooses to go temporarily on another job, he will be paid the rate of the temporary job.

3.4. There shall not be introduced in any plant any new system of bonuses, premiums, or production incentives unless the Company first gives the Union thirty (30) days notice in writing of the proposed new system. The Union and the Company shall then collaborate on said new system, and if unable to agree,

arbitration shall be resorted to. The Union recognizes the right of the Company to modernize or change the method of operation by installing new machinery. In the event a new type of machinery is installed by the Company, after said machinery has been in use two (2) calendar months, the Union and the Company shall determine whether the rates of pay of employees operating the said machinery shall be adjusted. If an adjustment cannot be agreed upon, the matter shall be arbitrated as herein provided.

4. ADDITIONAL WAGE AND HOUR REGULATIONS

4.1. Overtime pay shall be paid as follows:

(a) Employees in the flat, pressing, and sewing departments shall receive time and one-half of their guaranteed rate for all work performed over forty (40) hours per week. In addition, they shall receive normal incentives for such work.

(b) Employees in the washroom shall receive the following amounts, in addition to their normal incentives, for all work performed over forty (40) hours per week:

Beginning December 3, 1964 - 15¢ per hour
Beginning December 3, 1965 - 22½¢ per hour
Beginning December 3, 1966 - 30¢ per hour
Beginning December 3, 1967 - 37½¢ per hour

(c) No overtime pay will be paid to driver-salesmen, helpers, engineers, janitors, maintenancemen, and tumblermen.

(d) This section shall not be considered a guarantee of any number of hours of work per week.

4.2. No split shifts will be allowed and each daily schedule of employment shall consist of consecutive hours of work with the exception of time-off for a lunch period.

4.3. An employee reporting for work as usually scheduled, without receiving advance notice to the contrary, shall be guaranteed at least four (4) hours work or four (4) hours pay at his regular hourly rate of pay, unless an emergency occurs beyond the control of the employer.

4.4. All employees shall be paid weekly within five (5) days after the close of the week.

4.5. The Company agrees to divide all overtime work in each department as equally as possible between the employees of said department, whenever practicable.

5. HOLIDAYS

1. The Company will pay for six (6) holidays in the year; namely,

New Years Day, Decoration Day, Fourth of July, Labor Day, Thanksgiving and Christmas Day, subject to the following conditions:

(a) The holiday pay shall be on the basis of eight (8) times the employee's average hourly pay, not including overtime, for the week preceding the holiday; provided, however, that the amount of holiday pay for Thanksgiving shall also be paid for Christmas Day and New Years Day.

(b) The above provisions for paid holidays shall be effective, notwithstanding that the paid holiday provided for falls on a Saturday or Sunday. Sunday holidays shall be celebrated on Monday.

(c) Employees required to work on a holiday shall be paid at the rate of time and one-half for all hours worked, in addition to their holiday pay.

(d) Any employee must be in the employ of the Company for a period of sixty (60) days prior to any paid holiday in order to be eligible to receive holiday pay.

(e) An employee must work the three (3) days before the holiday, the three (3) days after the holiday, and on the holiday, if scheduled, to be eligible for holiday pay.

6. VACATIONS

1. Paid vacations shall be granted as provided below:

(a) Every employee who has completed one (1) year continuous employment shall be entitled to one (1) week vacation with pay.

(b) Every employee who has completed five (5) years continuous employment shall be entitled to two (2) weeks vacation with two (2) weeks pay.

(c) A weeks pay for vacation purposes shall be two percent (2%) of the employee's earnings with the Company shown on the employee's Treasury Department W-2 Form for the previous year; provided, however, that if a new employee was not in the employ of the Company during the entire previous year, a weeks vacation pay for him shall be two percent (2%) of his earnings with the Company during the fifty-two (52) weeks preceding his first anniversary date of employment.

(d) Eligibility for employees' vacation shall be determined as of the anniversary date and shall be given during the vacation period provided in the contract.

(e) An employee must have worked at least 1800 hours during the previous anniversary year in order to receive full vacation pay. If an employee

has worked less than 1800 hours during said year, he shall receive prorated vacation pay based upon the ratio between the number of hours worked and 1800 hours.

(f) The vacation period shall be between February 15 and November 15 of each year. On January 2, there shall be distributed throughout the plant by the shop steward, a vacation schedule on which the employee shall designate, according to departmental seniority, the period during which the vacation is desired. The schedule shall be completed on or before January 30, and on that date, it shall be submitted to the Company. On or before February 10, the Company shall return the said schedule to the shop steward and shall indicate any change desired by the Company by reason of hardship or difficulty that the said schedule may impose upon the Company. Changes made by the Company shall be subject to investigation by the Union. The vacation schedule shall be finally determined on or before February 15, and shall be posted upon the bulletin board.

(g) An employee required by the Company to take his vacation during a period which includes a paid holiday, must be paid for said holiday, in addition to his vacation pay. An employee who elects to take his vacation during such period shall not receive such paid holiday.

(h) Driver-Salesmen (or helpers) on vacation shall be paid vacation pay as set forth above. Any commissions earned on the route during their vacation will be paid to them the following month as if they had worked. The Driver-Salesman (or helper) substituting on a route during the vacation periods shall not receive commissions earned on such routes during such periods.

7. SENIORITY

7.1. The Company agrees to file with the Union within one (1) week after execution of this Agreement, a list containing the names and addresses of all employees covered by this Agreement with their length of service with the Company, and in the department in which they are employed in departmental seniority order.

7.2. Seniority is based on length of service regular employees have with the Company. Each employee shall have departmental seniority based on length of service in said department. Seniority shall be accumulated during absence due to illness, accidents occurring in the course of regular employment for the Company, and pregnancy for a period of not more than twenty (20) weeks, provided that the employee submits a doctor's certificate substantiating the reason for the absence. In case of pregnancy, an absent employee shall give the Company two (2) weeks notice of her return to work.

7.3. Departmental seniority shall prevail when it becomes necessary to increase the working force, those employees laid off shall be reemployed in order

of their departmental seniority. The Company shall not hire any new employees as long as there are furloughed employees who have not been recalled from furlough or layoff.

7.4. In all cases of promotion, and in filling vacancies, departmental seniority rights shall first be exercised before Company seniority rights are recognized, provided that the employee has the ability to perform the work.

7.5. New or open routes shall be put up for bid for three (3) working days. Highest seniority and ability to service the route shall determine the successful bidder. There shall be only one route bid every two (2) years to a successful bidder.

7.6. UNION OFFICIALS AND SHOP STEWARDS

For the purpose of maintaining Union representation, one (1) officer of the Union and two (2) Shop Stewards shall head the seniority list of the plant. This shall apply only to a reduction of working force involving layoffs, transfers and reinstatements.

Upon expiration of their terms of office, all such officers shall revert to their respective original positions on the seniority lists, based on date of hire.

8. HEALTH AND SAFETY

8.1. The Company shall provide adequate, proper, comfortable and sanitary facilities for rest room purposes which shall include towels, soap, and a cot with clean sheets, pillows and pillow cases.

8.2. The Company shall comply with all health and sanitary regulations of the State of Maryland.

8.3. The parties hereto agree that during the term of this Agreement, the Shop Stewards and representative of management will meet for the purposes of discussing and improving working conditions. It is understood, that such meetings will be held with reasonable promptness upon request of either party.

8.4. Where uniforms are required to be worn by the employees, such uniforms shall be furnished by the Company and shall be laundered and mended at the Company's expense. Such uniforms shall be worn by the employees, and failure to do so shall make them subject to discipline. If such uniforms are not returned to the Company upon request, the Company may deduct the cost of the uniforms from the employee's pay.

9. CHECK-OFF

9.1. The Company will check-off such monthly dues and initiation fees as shall be designated by the Secretary-Treasurer of the Union uniformly required

of all Union members on the basis of individually signed voluntary check-off authorization cards in forms agreed to by the Company and the Union worded substantially as follows:

> "Pursuant to this authorization and assignment, please deduct from my pay, while I am in employment within the collective bargaining unit in the Company, dues, assessments and initiation fee each as designated by the Secretary-Treasurer of the Union, as my membership dues in said Union.
>
> The aforesaid membership dues shall be remitted promptly by you to the Secretary-Treasurer of the AFL-CIO Laundry and Dry Cleaning International Union, Local 195 or its successor.
>
> This assignment and authorization shall be effective and cannot be cancelled for a period of one (1) year from the date appearing above or until the termination date of the current collective bargaining agreement between the Company and the Union, whichever occurs sooner.
>
> I hereby voluntarily authorize you to continue the above authorization and assignment in effect after the expiration of the shorter of the periods above specified, for further successive periods of one (1) year from such date. I agree that this authorization and assignment shall become effective and cannot be cancelled by me during any of such years, but that I may cancel and revoke by giving to the appropriate management representative of the plant in which I am then employed, an individual written notice signed by me and which shall be postmarked or received by the Company within fifteen days following the expiration of any such year or within fifteen days following the termination date of any collective bargaining agreement between the Company and the Union covering my employment if such date shall occur within one of such annual periods. Such notice of revocation shall become effective respecting the dues for the month following the month in which such written notice is given; a copy of any such notice will be given by me to the Secretary-Treasurer of the Local."

9.2. Deductions on the basis of authorization cards submitted to the Company shall commence, with respect to the dues, in the month in which the Company receives such authorization card or in which such card becomes effective, whichever is later. Dues for a month shall be deducted from the first pay each employee is to receive for said month.

10. STRIKES AND LOCKOUTS

10.1. There shall be no strike, slowdown, picketing, boycott or other interference or interruption to the normal conduct of the Company's business by the Union, its members or representatives, during the term of this Agreement and the Company will not lockout its employees.

10.2. Employees shall not be required to place themselves in jeopardy in going through a picket line.

11. UNION ACTIVITIES AND GRIEVANCE MACHINERY

11.1. The Union shall advise the Company of the person and persons, either appointed or elected by the Union or the employees, as a Shop Steward and Grievance Committee, and the Company agrees to meet with said Shop Steward and

Grievance Committee for the purposes of ascertaining the facts concerning complaints or grievances, and the presentation of such complaints or grievances employees may have.

11.2. The Company agrees that it will not discriminate against any employee for Union activities or for reporting any violation of this Agreement.

11.3. Local Business Agents or International Representatives of the Union shall have access to the Company's place of business, and shall be given every opportunity to investigate whether the terms of this Agreement are being observed, including the right to inspect the Company's payroll and time records, if relevant to a pending dispute. However, in the event that the Union desires to check the aforesaid payroll and time records of the Company's employees, it must give prior notice to the Company of its desire to do so. Such Union visitations shall not unduly interfere with the Company's business.

11.4. All complaints or grievances shall first be taken up by the Steward and/or Grievance Committee with the representative of the Company. If the Steward and/or Grievance Committee and Company representative are unable to adjust said grievance within two (2) working days, the Business Agent or officer of the Union shall try to adjust said grievance with the representative of the Company.

11.5. In the event the Union representative and the Company representative cannot adjust a grievance or dispute within two (2) working days, the matter shall then be referred to arbitration.

11.6. (a) A Board of Arbitration shall be constituted as follows:

One member is to be selected by the Union, one by the Employer and the two shall select a third. In the event they are unable to select a third, the third arbitrator shall be selected by the American Arbitration Association in accordance with their established practices. Said Board shall have no power to subtract from or otherwise modify any of the terms of this Agreement.

(b) Notice of intent to proceed to arbitration must be given in writing within one (1) week of the Employer's answer in the final step of the grievance procedure. The parties shall then arrange a mutually satisfactory time to present the case in arbitration, but in no event shall either the Employer or the Union cause this time to be more than thirty (30) days from the date of notice of intent to proceed to arbitration.

The decision of the arbitration shall be final and binding upon both parties, and the cost of the third arbitrator is to be borne equally by both parties.

11.7. It is agreed between the parties that the only matters subject to arbitration shall be any and all disputes growing out of the interpretation, construction and application of the terms of this Contract.

12. MANAGEMENT

12.1. The management of the business and the direction of the employees of the Company, including the right to hire under the terms hereof, discipline, suspend or discharge for proper cause, or transfer, and the right to relieve employees from duty for proper cause, is vested exclusively in the Company, provided that the Union shall have the right to investigate such action; provided, further, that the within paragraph shall be subject to the provisions of the within Agreement including the provisions for Arbitration.

13. DISCHARGE

13.1. If an employee is discharged, the Company will notify the Shop Steward promptly, if he is available. If he is not available, the Company will notify the Union within forty-eight (48) hours by phone or otherwise.

14. GENERAL PROVISIONS

14.1. Within one (1) week after the execution of this Agreement, the Company will provide the Union with a list of its supervisors.

14.2. The Company agrees that it will not enter into any written or verbal agreement with any of its employees covered by this Agreement, the provisions of which are inconsistent with or which, in any way, modify or waive any of the provisions of this Agreement. It is understood, however, that it shall not be inconsistent with or in violation of this Agreement for the employer to pay any rates of pay in excess of the wage schedules set forth herein.

14.3. The Company shall have the right to promulgate a reasonable set of plant rules. Such rules can only become effective ten (10) days after notice to the Union.

14.4. It is agreed by the parties that if any Federal, State or Municipal minimum wage law is enacted or amended requiring an increase in the wage rates of any employee covered by this Agreement such wage rate increase shall be chargeable against the schedule of wage increases as is set forth in this Agreement for such employee. It being the intention of the parties that if the legal minimum wage exceeds the wage being paid to an employee, the future wage increases provided for herein shall not be operative until the sum of increases equals the legal minimum wage rate as established or amended.

14.5. This Contract is the complete and entire understanding between the parties custom and past practice to the contrary notwithstanding.

15. REST PERIODS

15.1. Each employee in the laundry shall be given a ten (10) minute rest period in the morning and a ten (10) minute rest period in the afternoon.

16. SEPARABILITY

16.1. In the event any of the terms or provisions of this Agreement shall be or become invalid or unenforceable by reason of any Federal, State or Municipal law, directive, order, rule or regulation now existing or hereafter enacted or issued, or any decision of a court of last resort, such invalidity or unenforceability shall not affect or impair any other terms or provisions hereof.

17. TERM OF CONTRACT

17.1. The within Agreement shall be in full force and effect from December 3, 1964 respecting all plant employees, and from December 7, 1964 respecting all driver-salesmen and helpers until December 2, 1968, all dates inclusive, and shall continue thereafter from year to year unless sixty (60) days notice in writing be given by either party to the other, prior to the expiration date, of the desire to cancel, change, or modify said contract or any terms thereof.

17.2. In the event this Agreement terminates and the parties are unable to agree upon a new agreement, and by mutual agreement decide to continue negotiations beyond the termination period of this Agreement, the terms and conditions of this Contract shall be adhered to until a final agreement is reached. Upon agreement by both parties to a new Contract, it is agreed that the date of the new agreement shall be the expiration date of the old agreement, and all terms and conditions of the new agreement shall be retroactive to the expiration date of this Agreement.

IN WITNESS WHEREOF, the parties hereto intending to be legally bound hereby, have hereunto set their hands and seals the day and year first above written.

FOR THE COMPANY	FOR THE UNION
/s/ Irwin M. Grinsfelder (SEAL)	/s/ Clem R. Regner (SEAL)
Irwin M. Grinsfelder, President	Clem R. Regner, Director of Organization
	/s/ Cleveland L. Harris (SEAL)
	Cleveland L. Harris, Int'l. Representative
	/s/ Kathleen Scott (SEAL)
	Kathleen Scott, Committee Member
	/s/ Esterlena Epps (SEAL)
	Esterlena Epps, Committee Member
	/s/ Carl Montier (SEAL)
	Carl Montier, Committee Member

WAGE RATES

SCHEDULE "A"

IN-PLANT EMPLOYEES

I. Washroom

All washroom employees shall be paid according to the present incentive plan plus the following amounts:

	Each hour worked up to 40 hours per week	Each hour worked over 40 hours per week
Beginning 12/3/64	10¢	15¢
Beginning 12/3/65	15¢	22½¢
Beginning 12/3/66	20¢	30¢
Beginning 12/3/67	25¢	37½¢

II. Flat Department

All employees in the flat department shall be paid as follows:

Beginning 12/3/64 - $1.00 per hour plus one-half of the present incentives

Beginning 12/3/65 - $1.05 per hour plus one-half of the present incentives

Beginning 12/3/66 - $1.10 per hour plus one-half of the present incentives

Beginning 12/3/67 - $1.15 per hour plus one-half of the present incentives

III. Press Department and Sewing Department

All employees in the press department and sewing department shall be paid according to the present incentive plan except that the base for 100% production and the guarantee shall be as follows:

	100% Base	Guarantee
Beginning 12/3/64	$1.10	$1.05
Beginning 12/3/65	$1.15	$1.05
Beginning 12/3/66	$1.20	$1.10
Beginning 12/3/67	$1.25	$1.15

IV. Stock Make-Up and Janitor

Stock make-up employees and the janitor shall be paid as follows:

Beginning 12/3/64 - $1.10 per hour
Beginning 12/3/65 - $1.15 per hour
Beginning 12/3/66 - $1.20 per hour
Beginning 12/3/67 - $1.25 per hour

V. Tumblerman

The tumblerman shall be paid as follows:

Beginning 12/3/64 - $65.00 per week
Beginning 12/3/65 - $67.50 per week
Beginning 12/3/66 - $70.00 per week
Beginning 12/3/67 - $75.00 per week

VI. Engineer

The engineer shall be paid as follows:

Beginning 12/3/64 - $105.00 per week
Beginning 12/3/65 - $110.00 per week
Beginning 12/3/66 - $115.00 per week
Beginning 12/3/67 - $120.00 per week

SCHEDULE "B"

DRIVER-SALESMEN AND HELPERS

I. Beginning 12/7/64 - The Company will pay an increase of $8.00 per week per route, to be divided $5.00 per week to the driver-salesman and $3.00 per week to the helper if a 2 man route.

Beginning 12/7/65 - In addition to salary, the Company will pay per route 1% commission on business delivered.

Beginning 12/7/66 - In addition to salary, the Company will pay per route 1½% commission on business delivered.

Beginning 12/7/67 - In addition to salary, the Company will pay per route 2% commission on business delivered.

II. In applying the above schedule, where there are two men on a route, 60% of the commission shall be paid to the driver-salesman and 40% to the helper. All commissions shall be payable on the 15th and 30th of the month following delivery.

III. In addition to the above, the Company will continue to pay the existing attendance bonus and sales commissions now received by driver-salesmen and helpers, except that beginning December 7, 1965 and thereafter, the sales commission on rugs shall be the same as the prevailing commission rate set forth above.

IV. The weekly rate of pay for probationary driver-salesmen and helpers shall be as follows:

a. During the first thirty (30) days of employment - $10.00 less than the lowest weekly rate then being paid to any regular employee in their respective classifications.

b. During the next thirty (30) days of employment - an additional $5.00 per week.

c. After sixty (60) days of employment - the lowest weekly rate then being paid to any regular employee in their respective classifications.

AFL-CIO LAUNDRY AND DRY CLEANING INTERNATIONAL UNION

LOCAL 195

A G R E E M E N T

MADE THIS 3/11 DAY OF 1965 BY AND BETWEEN AFL-CIO LAUNDRY AND DRY CLEANING INTERNATIONAL UNION LOCAL 195, party of the first part, and hereinafter referred to as the "UNION"

A N D

ARISTOCRAT LINEN SUPPLY COMPANY, INC.

W I T N E S S E T H

In consideration of the mutual benefits to be derived by the parties of the first part and second part hereto by the adoption and execution of this Agreement and further, in consideration of the agreements and stipulations made herein, the said parties have agreed as follows:

1. UNION RECOGNITION

HL

1. The Company recognizes the Union as the sole and exclusive agency to bargain collectively for the purpose of establishing rates of pay, hours of work and other conditions of employment for all the employees engaged in laundry, cleaning, dyeing and other production work covered by this Agreement, and over which the Union has jurisdiction.

2. EMPLOYMENT

2.1 The Company agrees that any person employed in any of the classifications covered by this Agreement who is a member of the Union in good standing on the effective date of this Agreement shall, as a condition of employment, maintain membership in the Union to the extent of paying the initiation fees and the periodic dues uniformly required of all Union members.

2.2 The Company agrees that any person employed in any of the classifications covered by this Agreement, who, on the effective date of this Agreement, is not a member in good standing in said Union, shall, as a condition of employment, become a member of said Union thirty (30) days after the effective date of this Agreement.

Aristocrat
3/11/65
C. T. James

2.3 New employees shall be considered to be probationary employees for a period of thirty (30) days during which they shall have no seniority, but shall enjoy and be bound by all of the provisions of this Agreement. If such employees are retained beyond the probationary period, they shall, as a condition of continued employment, immediately become members of the Union, and maintain membership in the Union to the extent of paying the initiation fees and the periodic dues uniformly required of all Union members, and their seniority shall then relate back to the date of employment.

2.4 It is agreed that all employees who are members of the Union must keep themselves in good standing, and in the event the Company receives notice from the Union that any employee is not in good standing, because of non-payment of dues and initiation fees, the employer shall upon the request of the Union in writing, lay off or suspend such employee.

2.5 The Company agrees to notify the Union on or about the first business day of each month of all newly hired employees the preceding month by sending the Secretary-Treasurer of the Union the names, addresses, dates of employment, and the departments assigned said newly hired employees.

2.6 Foremen and foreladies, who do not have the right to hire or fire, and who perform work under the jurisdiction of the Union, shall be covered by this Agreement and must, as a condition of employment, become a member of the Union and maintain membership in good standing in the Union as all other employees covered by this Agreement.

3. WAGES

to be submitted

3.1 The wage increases and rates for all employees covered by this Agreement are set forth in Schedule "A" and "B" attached.

3.2 There shall be no reduction in the wages, hourly or piecework rate of any employee as a result of this Agreement, notwithstanding that the employee is or shall be paid at a scale above the minimum herein provided. Nor shall a reduction be affected by changing the employee from a weekly to an hourly or piecework rate or vice versa.

ok.

3.3 Any employee required to do work outside of his regular classification in a lower rated classification shall, nevertheless, receive his regular classification rate of pay for all time he so works. However, any employee doing work in a classification higher than his regular classification shall receive the higher rate of pay for the time actually worked in such higher classification and every fraction of an hour so worked shall be considered as a full hour.

ok

3.4 There shall not be introduced in any plant any new system of bonuses, premiums, or production incentives unless the Company first gives the Union thirty (30) days notice in writing of the proposed new system. The Union and the Company shall then collaborate on said new system, and, if unable to agree, the dispute shall be referred to arbitration. The Union recognises the right of the Company to modernize or change the method of operation by installing new machinery. In the event a new type of machinery is installed by the Company, after said machinery has been in use two (2) calendar months, the Union and the Company shall determine whether the rates of pay of employees operating the said machinery shall be adjusted. If an adjustment cannot be agreed upon, the matter shall be arbitrated as herein provided.

ok.

3.5 Employees on incentive or piecework jobs, and who are assigned by the Company to instruct other employees, shall be paid their average hourly earnings for all time spent in training and instructing.

Hold ?

4. ADDITIONAL WAGE AND HOUR REGULATIONS

4.1 Regular hours of work for employees shall be forty (40) hours per week. All work performed over eight (8) hours per day or forty (40) hours per week shall be paid at the rate of time and one-half. All overtime provisions shall be applicable to bonus and piece work rate workers.

ok.

4.2 No split shifts will be allowed and each daily schedule of employment shall consist of consecutive hours of work with the exception of time off for a lunch period.

ok

4.3 Should the Company deem it necessary to change the hours of work on any shift or the shift of any employee they will discuss such change with the Union before it becomes effective.

ok.

4.4 An employee reporting for work as usually scheduled, without receiving advance notice to the contrary, shall be guaranteed at least four (4) hours work or four (4) hours pay at his regular hourly rate of pay, unless an emergency occurs beyond the control of the employer.

ok

4.5 All employees shall be paid weekly within three (3) days after the close of the week.

ok.

4.6 The Company agrees to divide all overtime work in each department as equally as possible between the employees of said department.

Hold ?

4.7 When an employee is called in on emergency work outside the normal work day or week, he shall, at his option, receive either a minimum of two (2) hours' pay or four (4) hours work at the applicable overtime rate.

Hold

5. HOLIDAYS

1. The Company will pay for six (6) holidays in the year; namely, New Years Day, Decoration Day, Fourth of July, Labor Day, Thanksgiving and Christmas Day, subject to the following conditions:

(a) The holiday pay shall be on the basis of eight (8) hours at the employee's regular rate of pay;

(b) The above provisions for paid holidays shall be effective, notwithstanding that the paid holiday provided for falls on a Saturday or Sunday. Sunday holidays shall be celebrated on Monday;

(c) Employees required to work on a holiday shall be paid at the rate of time and one-half for all hours worked, in addition to their holiday pay.

(d) Any employee must be in the employ of that respective plant for a period of sixty (60) days prior to any paid holiday in order to be eligible to receive holiday pay.

(e) An employee must work the day before the holiday, the day after the holiday, and on the holiday, if scheduled, to be eligible for holiday pay.

6. VACATIONS

6.1 All employees covered by this Agreement in the regular employ of the company who meet the eligibility requirements for vacation pay shall be granted on the following basis:

1 week after 1 year

2 weeks after 5 years

3 weeks after 12 years

6.2 Two (2) weeks shall be granted consecutively and the third week by mutual agreement between the Employer and the employee.

6.3 The vacation period shall extend from January 1 to December 31.

6.4 Vacation pay shall be paid in advance of the time of the employee starting his vacation.

6.5 Regular and full time workers shall have the option of being paid for vacation on the basis of forty (40) hours at their base rate or an average of their weekly earnings, whichever is the greater.

6.6 Vacation for regular part-time workers shall be calculated by dividing the actual number of weeks worked into the amount received as wages according to the Employers Social Security record for the past year.

6.7 Sick Leave and Maternity Leave. An employee who has more than three (3) months off from work on a sick leave of absence or a maternity leave of absence during the year is to be paid his vacation pay, based on his earnings during the past calendar year, divided by fifty-two (52).

6.8 Employees with more than one year's service will be given credit for the pro-rated part of the year worked past their anniversary and/or accrual date when they are laid off because of a reduction in the working force, or who resign after one (1) week's notice. This shall not apply to employees who are discharged for cause.

6.9 On January 2, there shall be distributed throughout the plant by the Shop Steward, a vacation schedule on which the employee shall designate, according to departmental seniority, the period during which the vacation is desired. The schedule shall be completed on or before January 8 and on that date it shall be submitted to the company. On or before January 15 the Company shall return the schedule to the Shop Steward and shall indicate any change desired by the Company by reason of hardship or difficulty that the schedule may impose upon the Company. Changes made by the Company shall be subject to investigation by the Union. The vacation schedule shall be finally determined on or before January 28, and shall be posted upon the bulletin board.

6.10 An employee taking his vacation during a period which includes a paid holiday must be paid for said holiday, in addition to his vacation pay.

7. SENIORITY

7.1 The Company agrees to file with the Union within one (1) week after execution of this Agreement, a list containing the names and addresses of all employees covered by this Agreement with their length of service with the Company, and in the department in which they are employed in departmental seniority order.

7.2 Seniority is based on length of service regular employees have with the Company. Each employee shall have departmental seniority based on length of service in said department. Seniority shall be accumulated during absence due to illness, accidents occurring in the course of regular employment for the Company, and pregnancy. However, in maternity cases, the employee must be available to work within three (3) months after the termination of pregnancy.

7.3 Seniority shall prevail when it becomes necessary to reduce the working force, and, when it becomes necessary to increase the working force,

those employees laid off shall be reemployed in order of their seniority. The Company shall not hire any new employees as long as there are furloughed employees who have not been recalled from furlough or layoff.

OK.

7.4 In all cases of promotion, and if filling vacancies, departmental seniority rights shall first be exercised before Company seniority rights are recognized.

OK.

7.5 UNION OFFICIALS AND SHOP STEWARDS

For the purpose of maintaining Union representation, the Union President, Vice President, Financial Secretary, Recording Secretary, and Shop Stewards shall head the seniority list of the plant. This shall apply only to a reduction of working force involving layoffs, transfers and reinstatements.

OK

Upon expiration of their terms of office, all such officers shall revert to their respective original positions on the seniority lists, based on date of hire.

8. HEALTH AND SAFETY

8.1 The Company agrees that all premises wherein the employees shall work will be adequately ventilated.

OK

8.2 The Company shall provide adequate and sanitary eating facilities. They shall further provide areas for dressing, and rest room purposes, and for towels, soap, a cot with clean sheets and pillow cases.

OK

8.3 The Company shall comply with all health and sanitary regulations of the State of Maryland.

OK

8.4 The parties hereto agree that during the term of this Agreement, the Shop Steward and representative of management will meet for the purposes of discussing and improving working conditions. It is understood that such meetings will be held upon request of either party.

OK.

8.5 Where uniforms are required to be worn by the employees, such uniforms shall be furnished by the Company and shall be laundered and mended at the Company's expense.

Hold!

9. CHECK-OFF

9.1 The Company will check-off such monthly dues and initiation fees as shall be designated by the Secretary-Treasurer of the Union uniformly required of all Union members on the basis of individually signed voluntary check-off authorization cards in forms agreed to by the Company and the Union worded substantially as follows:

> "Pursuant to this authorization and assignment, please deduct from my pay, while I am in employment within the collective bargaining unit in the Company, dues, assessments and initiation fee each as

designated by the Secretary-Treasurer of the Union, as my membership dues in said Union.

The aforesaid membership dues shall be remitted promptly by you to the Secretary-Treasurer of the AFL-CIO Laundry and Dry Cleaning International Union, Local 195, or its successor.

This assignment and authorization shall be effective and cannot be cancelled for a period of one (1) year from the date appearing above or until the termination date of the current collective bargaining agreement between the Company and the Union, whichever occurs sooner.

I hereby voluntarily authorize you to continue the above authorization and assignment in effect after the expiration of the shorter of the periods above specified, for further successive periods of one (1) year from such date. I agree that this authorization and assignment shall become effective and cannot be cancelled by me during any of such years, but that I may cancel and revoke by giving to the appropriate management representative of the plant in which I am then employed, an individual written notice signed by me and which shall be postmarked or received by the Company within fifteen days following the expiration of any such year or within the fifteen days following the termination date of any collective bargaining agreement between the Company and the Union covering my employment if such date shall occur within one of such annual periods. Such notice of revocation shall become effective respecting the dues for the month following the month is which such written notice is given; a copy of any such notice will be given by me to the Secretary-Treasurer of the Local."

9.2 Deductions on the basis of authorization cards submitted to the Company shall commence, with respect to the dues, in the month in which the Company receives such authorization card or in which such card becomes effective, whichever is later. Dues for a month shall be deducted from the first pay each employee is to receive for said month.

10. STRIKES AND LOCKOUTS

10.1 There shall be no strike, slowdown, picketing, boycott or other interference or interruption to the normal conduct of the company's business by the Union, its members or representatives, during the term of this Agreement and the Company will not lockout its employees.

10.2 It shall not be deemed a breach of this Agreement for any employee to refuse to go through a picket line or to work in any place where there is a labor dispute unless he is ordered to do so by the Union.

11. UNION ACTIVITIES AND GRIEVANCE MACHINERY

11.1 The Union shall advise the Company of the person and persons, either appointed or elected by the Union or the employees, as a Shop Steward ~~and Grievance Committee,~~ and the Company agrees to meet with said Shop Steward ~~and Grievance Committee~~ for the purpsoes of ascertaining the facts concerning complaints or grievances, and the presentation of such complaints or grievances employees may have.

11.2 The Company agrees that it will not discriminate against any employee for Union activities or for reporting any violation of this Agreement.

11.3 Representatives of the Union shall have access to the Company's place of business, and shall be given every opportunity to investigate whether the terms of this Agreement are being observed, including the right to inspect the Company's payroll and time records. However, in the event that the Union desires to check the aforesaid payroll and time records of the Company's employees, it must give prior notice to the Company of its desire to do so.

11.4 All complaints or grievances shall first be taken up by the Steward and/or [redacted] with the representative of the Company. If the Steward and/or [redacted] and Company representative are unable to adjust said grievance, the Business Agent or officer of the Union shall try to adjust said grievance with the representative of the Company.

11.5 In the event the Union representative and the Company representative cannot adjust a grievance or dispute within a reasonable time, the matter shall then be referred to arbitration.

11.6 (a) A Board of Arbitration shall be constituted as follows:

One member is to be selected by the Union, one by the Employer and the two shall select a third. In the event they are unable to select a third, the third arbitrator shall be selected by the American Arbitration Association in accordance with their established practices. Said Board shall have no power to subtract from or otherwise modify any of the terms of this Agreement.

(b) Notice of intent to proceed to arbitration must be given in writing within one (1) week of the Employer's answer in the final step of the grievance procedure. The parties shall then arrange a mutually satisfactory time to present the case in arbitration, but in no event shall either the Employer or the Union cause this time to be more than thirty (30) days from the date of notice of intent to proceed to arbitration.
The decision of the Arbitor shall be final and binding upon both parties, and the cost is to be borne equally by both parties.

11.7 It is agreed between the parties that the only matters subject to arbitration shall be any and all disputes growing out of the interpretation, construction and application of the terms of this Contract.

12. MANAGEMENT

12.1 The management of the business and the direction of the employees of the Company, including the right to hire under the terms hereof, discipline, suspend or discharge for proper cause, or transfer, and the right to relieve

employees from duty for proper cause, is vested exclusively in the Company, provided that the Union shall have the right to investigate such action; provided, further, that the within paragraph shall be subject to the provisions of the within Agreement including the provisions for Arbitration.

OK!

13. DISCHARGE

13.1 The Company shall give the Union written notice as to any employee who is being discharged, and the reasons therefore. A copy of the written notice shall be furnished to the discharged employee and to the Union Shop Steward at the time of discharge.

ok.

14. GENERAL PROVISIONS

14.1 In the event there appears to be a misunderstanding as to the supervision of any or all of the employees covered by this Agreement, upon request of the Union, the Company agrees to furnish in writing the names of any such supervisory employees and the extent of his or their authority.

ok.

14.2 The Company agrees that it will not enter into any written or verbal agreement with any of its employees covered by this Agreement, the provisions of which are inconsistent with or which, in any way, modify or waive any of the provisions of this Agreement. It is understood, however, that it shall not be inconsistent with or in violation of this Agreement for the employer to pay any rates of pay in excess of the wage schedules set forth herein.

OK

14.3 The Company shall have the right to draft a reasonable set of plant rules. Such rules can only become effective thirty (30) days after notice to the Union. (Rules to be submitted by Union) from association

OK

14.4 It is agreed by the parties that if any Federal, State or Minicipal minimum wage law is enacted or amended requiring an increase in the wage rates of any employee covered by this Agreement such wage rate increase shall be chargeable against the schedule of wage increases as is set forth in this Agreement for such employee. It being the intention of the parties that if the legal minimum wage exceeds the wage being paid to an employee, the future wage increases provided for herein shall not be operative until the sum of increases equals the legal minimum wage rate as established or amended.

OK!

14.5 This Contract is the complete and entire understanding between the parties custom and past practice to the contrary notwithstanding.

OK

15. REST PERIODS

15.1 Each employee in the laundry shall be given a fifteen (15) minute rest period in the morning, a ten (10) minute rest period in the afternoon, and a five (5) minute wash-up period just prior to the close of shift.

Hold!

16. INSURANCE

Hold

(The Union wishes to negotiate an insurance plan covering all bargaining unit employees but wish to review any plan the Company now furnishes its employees before submitting said Plan.)

17. SEPARABILITY

Hold

17.1 In the event any of the terms or provisions of this Agreement shall be or become invalid or unenforceable by reason of any Federal, State or Municipal law, directive, order, rule or regulation now existing or hereafter enacted or issued, or any decision of a court of last resort, such invalidity or unenforceability shall not affect or impair any other terms or provisions hereof.

18. TERM OF CONTRACT

18.1 The within Agreement shall be in full force and effective from the 1965, until the , both dates inclusive, and shall continue thereafter from year to year unless sixty (60) days notice in writing be given by either party to the other, prior to the expiration date, of the desire to cancel, change, or modify said contract or any terms thereof.

18.2 In the event this Agreement terminates and the parties are unable to agree upon a new agreement, and by mutual agreement decide to continue negotiations beyond the termination period of this Agreement, the terms and conditions of this Contract shall be adhered to until a final agreement is reached. Upon agreement by both parties to a new Contract, it is agreed that the date of the new agreement shall be the expiration date of the old agreement, and all terms and conditions of the new agreement shall be retroactive to the expiration date of this Agreement.

IN WITNESS WHEREOF, the parties hereto intending to be legally bound hereby, have hereunto set their hands and seals the day and year first above written.

FOR THE COMPANY	FOR THE UNION
_____(SEAL)	_____(SEAL)
_____(SEAL)	_____(SEAL)
_____(SEAL)	_____(SEAL)

1970

AFL-CIO LAUNDRY AND DRY CLEANING INTERNATIONAL UNION
LOCAL 195
A G R E E M E N T

MADE THIS 29th DAY OF MARCH BY AND BETWEEN AFL-CIO LAUNDRY AND DRY CLEANING INTERNATIONAL UNION, LOCAL 195, party of the first part, and hereinafter referred to as the "UNION"

AND

BUGLE COAT, APRON AND LINEN SERVICE, INC.
AND
INDUSTRIAL LAUNDRY CORPORATION

WITNESSETH

In consideration of the mutual benefits to be derived by the parties of the first part and the second part hereto by the adoption and execution of this Agreement and further, in consideration of the agreements and stipulations made herein, the said parties have agreed as follows:

1. UNION RECOGNITION

1. The Company recognizes the Union as the sole and exclusive agency to bargain collectively for the purpose of establishing rates of pay, hours of work and other conditions of employement for all the employees engaged in laundry, cleaning, dyeing and other production work covered by this Agreement, and over which the Union has jurisdiction.

2. EMPLOYMENT

2.1 The Company agrees that any person employed in any of the classifications covered by this Agreement who is a member of the Union in good standing on the effective date of this Agreement shall, as a condition of employment, maintain membership in the Union to the extent of paying the initiation fees and the periodic dues uniformly required of all Union members.

2.2 The Company agrees that any person employed in any of the classifications covered by this Agreement, who, on the effective date of this Agreement, is not a member in good standing in said Union, shall, as a condition of employment become a member of said Union within thirty (30) days after the effective date of this Agreement.

(Clayton T. James)
3/29/65

2.3 New employees shall be considered to be probationary employees for a period of thirty (30) days during which they shall have no seniority, but shall enjoy and be bound by all of the provisions of this Agreement. If such employees are retained beyond the probationary period, they shall, as a condition of continued employment, immediately become members of the Union, and maintain membership in the Union to the extent of paying the initiation fees and the periodic dues uniformly required of all Union members, and their seniority shall then relate back to the date of employment.

2.4 It is agreed that all employees who are members of the Union must keep themselves in good standing, and in the event the Company receives notice from the Union that any employee is not in good standing, because of non-payment of dues and initiation fees, the employer shall upon the request of the Union in writing, lay off or suspend such employee.

2.5 The Company agrees to notify the Union on or about the first business day of each month of all newly hired employees the preceding month by sending the Secretary-Treasurer of the Union the names, addresses, dates of employment, and the departments assigned said newly hired employees.

2.6 Leadmen and floorladies, who do not have the right to hire or fire or effectively recommend such action, and who perform work under the jurisdiction of the Union, shall be covered by this Agreement and must, as a condition of employment, become a member of the Union and maintain membership in good standing in the Union as all other employees covered by this Agreement.

3. WAGES

3.1 The wage increases and rates for all employees covered by this Agreement are set forth in Schedule "A" and "B" attached.

3.2 There shall be no reduction in the wages, hourly or piecework rate of any employee as a result of this Agreement, notwithstanding that the employee is or shall be paid at a scale above the minimum herein provided. Nor shall a reduction be affected by changing the employee from a weekly to an hourly or piecework rate or vice versa.

3.3 Any employee required to do work outside of his regular classification in a lower rated classification shall, nevertheless, receive his regular classification rate of pay for all time he so works. However, any employee doing work in a classification higher than his regular classification shall receive the higher rate of pay for the time actually worked in such higher classification and every fraction of an hour so worked shall be considered as a full hour.

3.4 There shall not be introduced in any plant any new system of bonuses, premiums, or production incentives unless the Company first gives the Union thirty (30) days notice in writing of the proposed new system. The Union and the Company shall then collaborate on said new system, and, if unable to agree, the dispute shall be referred to arbitration. The Union recognizes the right of the Company to modernize or change the method of operation by installing new machinery. In the event a new type of machinery is installed by the Company, after said machinery has been in use two (2) calendar months, the Union and the Company shall determine whether the rates of pay of employees operating the said machinery shall be adjusted. If an adjustment cannot be agreed upon, the matter shall be arbitrated as herein provided. The arbitrator may only rule on whether the rate set by the Company was fairly established. In no case will be arbitrator attempt to establish a rate or standard.

3.5 Employees on incentive or piecework jobs, and who are assigned by the Company to instruct other employees, shall be paid their average hourly earnings for all time spent in training and instructing.

4. ADDITIONAL WAGE AND HOUR REGULATIONS

4.1 Regular hours of work for employees shall be forty (40) hours per week. All work performed over eight (8) hours per day or forty (40) hours per week shall be paid at the rate of time and one-half. All overtime provisions shall be applicable to bonus and piece work rate workers.

4.2 No split shifts will be allowed and each daily schedule of employment shall consist of consecutive hours of work with the exception of time off for a lunch period.

4.3 Should the Company deem it necessary to change the hours of work on any shift or the shift of any employee they will discuss such change with the Union before it becomes effective. This clause shall not apply to such changes in hours of work which may become necessary due to an emergency.

4.4 An employee reporting for work as usually scheduled, without receiving advance notice to the contrary, shall be guaranteed at least four (4) hours work or four (4) hours pay at his regular hourly rate of pay, unless an emergency occurs beyond the control of the employer.

4.5 All employees shall be paid weekly within three (3) business days after the close of the week.

4.6 The Company agrees to divide all overtime work in each department as equally as possible between the employees of said department.

4.7 When an employee is called in on emergency work outside the normal work day or week, he shall receive a minimum of four (4) hours of work at the applicable overtime rate, or if no work is available he shall receive two (2) hours of pay.

5. HOLIDAYS

5.1 The following shall be considered as holidays for employees subject to the provisions hereof, and shall be paid for on the basis of eight (8) hours pay at the employee's regular earnings: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas.

5.2 Employees shall not be entitled to holidays with pay when they fail to work when required the regular days of the week, including Saturday during holiday weeks, except when such failure to work results from excusable absences as defined below.

(1) Death in the immediate family: mother, father, wife, husband, child, brother, sister, mother-in-law, father-in-law, grandparents or foster child.

(2) Absent with employer's consent.

(3) Injuries in the course of duties causing disability during holiday week.

(4) Absence because of acute illness while employee is on the job resulting in inability to continue work for the day.

(5) Illness or accident verified by a doctor's statement or other satisfactory proof, incurred during the holiday week.

(6) When an employee fails to qualify for a paid holiday because of illness or accident which keeps them off their job for a maximum of thirty (30) days they will be granted a hearing to establish their right to holiday pay.

5.3 For the purpose of this Article, late reporting of 60 minutes shall not disqualify an employee from receiving holiday pay.

5.4 In a work week in which one of the holidays designated above falls, and which is paid for with unworked holiday pay, such holiday shall be considere time worked for purposes of computing overtime only where the employee has met the qualifications for receiving holiday pay.

5.5 When the holiday falls on Saturday, the unworked holiday pay shall be computed on a straight-time eight (8) hour basis and these eight (8) hours shall not be included in the actual hours worked in determining overtime for the week.

5.6 Holiday pay shall be paid to all employees covered by this Agreement after thirty (30) days employment.

5.7 When any of the above holidays fall on Sunday, and the day following is observed as the holiday by the Federal Government, the day of observance shall be considered as the holiday under the provisions of this Article.

5.9 If any of the employees are called upon to work on any of the designated holidays they shall be paid the holiday plus time-and-one-half.

6. VACATIONS

6.1 All employees covered by this Agreement in the regular employ of the company who meet the eligibility requirements for vacation pay shall be granted on the following basis:

1 week after 1 year

2 weeks after 5 years

6.2 Two (2) weeks shall be granted consecutively by mutual agreement between the Employer and the employee.

6.3 The vacation period shall extend from January 1 to December 31.

6.4 Vacation pay shall be paid in advance of the time of the employee starting his vacation.

6.5 Regular and full time workers who do not receive incentive pay shall have the option of being paid for vacation on the basis of forty (40) hours at their base rate, or an average of their total weekly earnings for the thirteen (13) weeks immediately preceding the week in which the vacation is paid, whichever is greater.

Regular and full time workers who are paid incentives shall have the option of being paid for vacation on the basis of forty (40) hours at their base rate or an average of their weekly earnings, which shall include the base rate plus incentives, using the best four (4) weeks out of the thirteen (13) weeks immediately preceding the week in which the vacation is paid, whichever is greater.

6.6 Vacation for regular part-time workers shall be calculated by dividing the actual number of weeks worked into the amount received as wages according to the Employer's Social Security record for the past year.

6.7 An employee with one (1) year's service with the Company, who is off work for three (3) months on an approved sick or maternity leave of absence is to be paid his vacation pay, based on his earnings during the past calendar, or anniversary year, whichever is applicable, divided by fifty-two (52).

6.8 Employees with more than one year's service will be given credit for the pro-rated part of the year worked past their anniversary and/or accrual date when they are laid off because of a reduction in the working force, or who resign after giving one (1) week's notice. This shall not apply to employees who are discharged for cause.

6.9 On January 2, there shall be distributed throughout the plant by the Shop Steward, a vacation schedule on which the employee shall designate, according to departmental seniority, the period during which the vacation is desired. The schedule shall be completed on or before January 8 and on that date it shall be submitted to the Company. On or before January 15 the Company

shall return the schedule to the Shop Steward and shall indicate any change desired by the Company by reason of hardship or difficulty that the schedule may impose upon the Company. Changes made by the Company shall be subject to investigation by the Union. The vacation schedule shall be finally determined on or before January 28, and shall be posted upon the bulletin board.

6.10 An employee taking his vacation during a period which includes a paid holiday must be paid for said holiday, in addition to his vacation pay, or be granted an extra day off with pay off with pay in lieu thereof.

7. SENIORITY

7.1 The principle of seniority, seniors being able to satisfactorily perform the work, will prevail in the Company's plant covered by this Agreement and shall terminate only for the specific reasons contained in this Agreement.

7.2 Seniority shall apply by: (1) Department; (2) Plant-wide.

7.3 Seniority shall be accumulated during absence due to illness, accident, accidents occuring during the course of regular employment for the Company, layoffs and pregnancy, for a period of one (1) year. However, in maternity cases, the employee must be available for work within three (3) months after the termination of the pregnancy.

7.4 Seniority shall prevail when it becomes necessary to reduce the working force. An employee thus displaced may elect to displace an employee with less seniority in another department, providing he or she can meet the normal requirements of the job.

7.5 In no event shall an employee use his seniority to displace another employee in a classification which carries a higher job rate.

7.6 In filling job vacancies the following procedure will prevail:

(a) The most senior employee reduced from the classification within the department.
(b) The most senior employee from within the department who seeks or requests an opportunity to fill the vacancy.
(c) The most senior employee in the plant who seeks, or requests an opportunity to fill the vacancy.
(d) Should a senior employee, so selected, fail to qualify for the job after a reasonable trial period they shall be permitted to return to their former classification or job.

7.7 The Company shall not hire new employees as long as there are employees who have not been recalled from furlough or layoff.

7.8 Seniority shall be terminated for the following reasons:

(a) If the employee quits
(b) If the employee is discharged
(c) If the employee fails to keep the Company informed of his proper address while on layoff
(d) Obtaining leave of absence by false representation

7.9 The Company shall provide the Union with a list containing the names and addresses of all of the employees covered by this Agreement with their length of service with the Company, and the department in which they are employed in departmental seniority.

7.10 For the purpose of maintaining Union Representation, the Union President, Vice President, Financial Secretary, Recording Secretary and Shop Stewards, who were elected and who are employed by this Company, shall head the seniority list of the plant. This shall apply only to a reduction of working force involving layoffs, transfers and reinstatements. Upon expiration of their terms of office, all such officers shall revert to their respective original positions on the seniority lists, based on date of hire.

8. HEALTH AND SAFETY

8.1 The Company agrees to take all necessary and reasonable steps to provide properly ventilated working areas for its employees.

8.2 The Company shall provide areas for dressing, and rest room purposes, and for towels, soap, a cot with clean sheets and pillow cases.

8.3 The Company shall comply with all health and sanitary regulations of the State of Maryland.

8.4 The parties hereto agree that during the term of this Agreement, the Shop Steward and representative of management will meet for the purposes of discussing and improving working and safety conditions. It is understood that such meetings will be held upon request of either party.

8.5 Where uniforms are required to be worn by the employees, such uniforms shall be furnished by the Company and shall be laundered and mended at the Company's expense.

9. CHECK-OFF

9.1 The Company will check-off such monthly dues and initiation fees as shall be designated by the Secretary-Treasurer of the Union uniformly required of all Union members on the basis of individually signed voluntary check-off authorization cards on forms agreed to by the Company and the Union worded substantially as follows:

> "Pursuant to this authorization and assignment, please deduct from my pay, while I am in employment within the collective bargaining unit in the Company, dues, assessments and initiation fee each as designated by the Secretary-Treasurer of the Union, as my membership dues in said Union.
>
> The aforesaid membership dues shall be remitted promptly by you to the Secretary-Treasurer of the AFL-CIO Laundry and Dry Cleaning International Union, Local 195, or its successor.
>
> This assignment and authorization shall be effective and cannot be cancelled for a period of one (1) year from the date appearing above or until the termination date of the current collective bargaining agreement between the Company and the Union, whichever occurs sooner.
>
> I hereby voluntarily authorize you to continue the above authorization and assignment in effect after the expiration of the shorter of the periods above specified, for further successive periods of one (1)

year from such date. I agree that this authorization and assignment shall become effective and cannot be cancelled by me during any of such years, but that I may cancel and revoke by giving to the appropriate management representative of the plant in which I am then employed, an individual written notice signed by me and which shall be postmarked or received by the Company within fifteen days following the expiration of any such year or within the fifteen days following the termination date of any collective bargaining agreement between the Company and the Union covering my employment if such date shall occur within one of such annual periods. Such notice of revocation shall become effective respecting the dues for the month following the month in which such written notice is given; a copy of any such notice will be given by me to the Secretary-Treasurer of the Local."

9.2 Deductions on the basis of authorization cards submitted to the Company shall commence, with respect to the dues, in the month in which the Company receives such authorization card or in which such card become effective, whichever is later. Dues for a month shall be deducted from the first pay each employee is to receive for said month.

10. STRIKES AND LOCKOUTS

10.1 There shall be no strike, slowdown, picketing, boycott or other interference or interruption to the normal conduct of the Company's business by the Union, its members or representatives, during the term of this Agreement and the Company will not lockout its employees.

11. UNION ACTIVITIES AND GRIEVANCE MACHINERY

11.1 The Union shall advise the Company of the person and persons, either appointed or elected by the Union or the employees, as a Shop Steward, and the Company agrees to meet with said Shop Steward for the purposes of ascertaining the facts concerning complaints or grievances, and the presentation of such complaints or grievances employees may have.

11.2 The Company agrees that it will not discriminate against any employee for Union activities or for reporting any violation of this Agreement.

11.3 Representatives of the Union shall have access to the Company's place of business, and shall be given every opportunity to investigate whether the terms of this Agreement are being observed, including the right to inspect the Company's payroll and time records. However, in the event that the Union desires to check the aforesaid payroll and time records of the Company's employees, it must give prior notice and reason to the Company of its desire to do so.

11.4 All complaints or grievances shall first be taken up by the Steward with the representative of the Company. If the Steward and Company representative are unable to adjust said grievance, the Business Agent or officer of the Union shall try to adjust said grievance with the representative of the Company.

11.5 In the event the Union representative and the Company representative cannot adjust a grievance or dispute within three (3) days, the matter shall then be referred to arbitration within ten (10) days.

11.6 (a) A Board of Arbitration shall be constituted as follows:

One member is to be selected by the Union, one by the Employer and the two shall select a third. In the event they are unable to select a third, the third arbitrator shall be selected by the American Arbitration Association in accordance with their established practices. Said Board shall have no power to subtract from or, add to, or otherwise modify the terms of this Agreement.

(b) Notice of intent to proceed to arbitration must be given in writing within ten (10) days of the Employer's answer in the final step of the grievance procedure. The parties shall then arrange a mutually satisfactory time to present the case in arbitration, but in no event shall either the Employer or the Union cause this time to be more than thirty (30) days from the date of notice of intent to proceed to arbitration. The decision of the Arbitor shall be final and binding upon both parties, and the cost is to be borne equally by both parties.

11.7 It is agreed between the parties that the only matters subject to arbitration shall be any and all disputes growing out of the interpretation, construction and application of the terms of this Contract.

12. MANAGEMENT

12.1 The management of the business and the direction of the working forces, including but not limited to the right to hire, assign employees to work shifts, suspend, promote, transfer or discharge for proper cause, and the right to relieve employees from duty because of lack of work or for other legitimate reasons is vested exclusively in management, subject to the terms of this Agreement.

12.2 In the event of change of equipment, management shall have the right to reduce the working force if, in the sole judgment of management such reduction of force is fairly required and nothing in this Agreement shall be construed to restrict the right of management to adopt, or install, or operate new or improved equipment or methods of operation, subject to the terms of this Agreement.

12.3 Nothing herein contained shall be intended or shall be considered as a waiver of any of the usual inherent and fundamental rights of management whether the same were exercised heretofore and the same are hereby expressly reserved to the employer, subject to the terms of this Agreement.

13. DISCHARGE

The Company shall have the right to discharge any employee without notice for just cause (such as, but not limited to, dishonesty, intoxication on duty, gross insubordination, fighting on duty, continued absence or tardiness, or

deliberate and aggravated misconduct). The Company agrees to submit to the Union written notice of any discharge and the reason therefore. The Company shall tender any wages and compensation due to a discharged employee as of his last working day. If the Union believes any discharge to be unjustified, such discharge may be made the subject of the grievance and arbitration procedures provided for elsewhere in this Agreement.

14. GENERAL PROVISIONS

14.1 In the event there appears to be a misunderstanding as to the supervision of any or all of the employees covered by this Agreement, upon request of the Union, the Company agrees to furnish in writing the names of any such supervisory employees and the extent of his or their authority.

14.2 The Company agrees that it will not enter into any written or verbal agreement with any of its employees covered by this Agreement, the provisions of which are inconsistent with or which, in any way, modify or waive any of the provisions of this Agreement. It is understood, however, that it shall not be inconsistent with or in violation of this Agreement for the employer to pay any rates of pay in excess of the wage schedules set forth herein.

14.3 The Company shall have the right to draft a reasonable set of plant rules. Such rules can only become effective thirty (30) days after notice to the Union.

14.4 It is agreed by the parties that if any Federal, State or Municipal minimum wage law is enacted or amended requiring an increase in the wage rates of any employee covered by this Agreement such wage rate increase shall be chargeable against the schedule of wage increases as is set forth in this Agreement for such employee. It being the intention of the parties that if the legal minimum wage exceeds the wage being paid to an employee, the future wage increases provided for herein shall not be operative until the sum of increases equals the legal minimum wage rate as established or amended.

15. REST PERIODS

15.1 Each employee in the laundry shall be given a ten (10) minute rest period in the morning, a ten (10) minute rest period in the afternoon.

16. SEPARABILITY

16.1 In the event any of the terms or provisions of this Agreement shall be or become invalid or unenforceable by reason of any Federal, State or Municipal law, directive, order, rule or regulation now existing or hereafter enacted or issued, or any decision of a court of last resort, such invalidity or unenforceability shall not affect or impair any other terms or provisions hereof.

17. TERM OF CONTRACT

The within Agreement shall be in full force and effective from the 1st day of April, 1965, until the 1st day of April, 1970, both dates inclusive, and shall continue thereafter from year to year unless sixty (60) days notice in writing be given by either party to the other, prior to the expiration date, of the desire to cancel, change or modify said contract or any terms thereof.

IN WITNESS WHEREOF, the parties hereto intending to be legally bound hereby, have hereunto set their hands and seals the day and year first above written.

FOR THE COMPANY	FOR THE UNION
Dennis J Smyth	C. R. Regner
	Cleveland Harris
	Minnie Brown
	Vivian Christian
	Raymeswalt Gowett
	Maggie Nicks
	Charlie M Stones

APPENDIX "A"
WAGE INCREASE

GENERAL WAGE INCREASE

All employees who are on the current payroll shall receive a fourteen cent (.14¢) per hour wage increase added to the present base of $1.10 per hour, effective March 29, 1965.

New employees, in production laundry jobs, shall start at $1.10 per hour. They shall receive a five cent (.05¢) per hour increase after two weeks of employment and shall receive an additional five cents (.05¢) per hour when they have completed their thirty (30) day probationary period, at which time their rate of pay shall be $1.20 per hour. The yearly five cent (.05¢) increases shall thereafter be applied to the $1.20 minimum for such employees.

New employees in all other classifications (non-production jobs) shall start at a rate of fifteen cents (.15¢) below the minimum rate for the job and shall have their rate increased by five cents (.05¢) per hour each week, starting with the third week of employment, so that they reach the minimum rate for the job upon completion of their thirty (30) day probationary period.

WAGE RATES FOR EMPLOYEES EMPLOYED AS OF MARCH 29, 1965

CLASSIFICATIONS	March 29 1965	April 1 1966	April 1 1967	April 1 1968	April 1 1969
WASH ROOM					
Wash Man	$1.54	$1.59	$1.64	$1.69	$1.74
Puller-Loader	1.39	1.44	1.49	1.54	1.59
Extractor Op.	1.39	1.44	1.49	1.54	1.59
Utility Man	1.39	1.44	1.49	1.54	1.59
LAUNDRY					
Feeder	1.24	1.29	1.34	1.39	1.44
Folder	1.24	1.29	1.34	1.39	1.44
Shaker	1.24	1.29	1.34	1.39	1.44
Checker	1.24	1.29	1.34	1.39	1.44
Tumbler Op.	1.24	1.29	1.34	1.39	1.44
Tying Machine Op.	1.24	1.29	1.34	1.39	1.44
Utility Man	1.24	1.29	1.34	1.39	1.44
PRESS ROOM					
Press Operator	1.24	1.29	1.34	1.39	1.44
Floor Girl	1.24	1.29	1.34	1.39	1.44
Utility Man	1.24	1.29	1.34	1.39	1.44
SOIL ROOM					
Sorter	1.24	1.29	1.34	1.39	1.44
Conveyor Op.	1.24	1.29	1.34	1.39	1.44
MENDING ROOM					
Checker-Distributor	1.24	1.29	1.34	1.39	1.44
Mender	1.24	1.29	1.34	1.39	1.44
WEARING APPAREL ROUTE MAKE-UP					
Checker	1.24	1.29	1.34	1.39	1.44
Stock Girl	1.24	1.29	1.34	1.39	1.44
Examine-Fold	1.24	1.29	1.34	1.39	1.44
Bagger	1.24	1.29	1.34	1.39	1.44
Route Assembler	1.24	1.29	1.34	1.39	1.44
Button Machine Op.	1.24	1.29	1.34	1.39	1.44

(all Rates +)(incentive)

WAGE RATES

CLASSIFICATION	March 29 1965	April 1 1966	April 1 1967	April 1 1968	April 1 1969
FLAT ROUTE MAKE-UP					
Route Assembler	$1.24	$1.29	$1.34	$1.39	$1.44
Conveyor Man	1.24	1.29	1.34	1.39	1.44
NEW LINEN STOCK					
Stock Clerk	1.50	1.55	1.60	1.65	1.70
Helper	1.24	1.29	1.34	1.39	1.44
MOP DEPARTMENT					
Mop Girl	1.24	1.29	1.34	1.39	1.44
BOILER ROOM					
Engineer	1.84	1.89	1.94	1.99	2.04
MECHANICAL MAINT.					
Mechanic	1.84	1.89	1.94	1.99	2.04
GARAGE					
Utility	1.34	1.39	1.44	1.49	1.54
BUILDING MAINT.					
Janitor	1.24	1.29	1.34	1.39	1.44
SECURITY					
Watchman	1.24	1.29	1.34	1.39	1.44

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1968

A G R E E M E N T

This agreement made this 3rd day of December, 1965, by and between AFL-CIO LAUNDRY AND DRY CLEANING INTERNATIONAL UNION, LOCAL 195, hereinafter referred to as the "Union" and THE ARCHER LAUNDRY COMPANY, hereinafter referred to as the "Company".

Whereas, the Company and the Union hereto desire to cooperate in maintaining a proper and suitable management-labor relationship and desire to establish fair and equitable terms and conditions of employment, the Company and the Union agree as follows:

ARTICLE I

RECOGNITION

The Company recognizes the Union as the sole and exclusive agency to bargain collectively for the purpose of establishing rates of pay, hours of work and other conditions of employment for all production and maintenance employees including leadmen, leadladies and plant clerical employees; excluding office clerical, branch store employees, drivers and supervisors as defined in the National Labor Relations Act, as amended.

ARTICLE II

UNION SECURITY

1. The Company agrees that any person employed in any of the classifications covered by this agreement who is a member of the Union is good standing on the effective date of this Agreement shall, as a condition of employment, maintain membership in the Union to the extent of tendering the initiation fees and the periodic dues uniformly required of all Union members.

2. The Company agrees that any person employed in any of the classifications covered by this Agreement on the effective date of this Agreement, who is not a member in good standing in the Union, shall as a condition of continued employment become a member of the Union within thirty (30) days after May 3, 1966, to the extent of tendering the initiation fees and the periodic dues uniformly required of all Union members.

3. New employees shall be considered to be probationary employees for a period of forty-five (45) days for skilled employees and for a perio of thirty (30) days for semi-skilled employees during which time they shall not be entitled to the benefits or be governed by the provisions of this Agreement. All new employees employed after the effective date hereof shall, as a condition of contimued employment, become and remain members of the Union in good standing to the extent of tendering normal initiation fees and dues upon termination of their probationary period.

4. All employees who are members of the Union or who become members of the Union must keep themselves in good standing as herein above defined, and in the event the Company receives written notice from the Union that any employee is not in good standing because of failure to tender normal dues and initiation fees, and such circumstances are, upon request, verified by the Union, the employer shall upon the request of the Union in writing, layoff or suspend such employee, within ten (10) working days of the receipt of such request.

5. Except for training, instruction, and experimental work, no executive, superintendent or foreman shall be allowed to perform any manual labor on any machine or operation if by doing so he displaces an employee covered by this Agreement,

unless such work is necessitated by an emergency.

ARTICLE III

CHECK-OFF

1. Commencing with the first pay day following the execution of this Agreement, the Company will check-off monthly dues and initiation fees as shall be designated by the Secretary-Treasurer of the Union uniformly required of all Union members on the basis of individually signed voluntary check-off authorization cards on forms agreed to by the Company and the Union worded substantially as follows:

> "Pursuant to this authorization and assignment, please deduct from my pay, while I am in employment within the collective bargaining unit in the Company, dues, assessments and initiation fee each as designated by the Secretary-Treasurer of the Union, as my membership dues in said Union.
>
> The aforesaid membership dues shall be remitted promptly by you to the Secretary-Treasurer of the AFL-CIO Laundry and Dry Cleaing International Union, Local 195, or its successor.
>
> This assignment and authorization shall be effective and cannot be cancelled for a period of one (1) year from the date appearing above or until the termination date of the current collective bargaining agreement between the Company and the Union, whichever occurs sooner.
>
> I hereby voluntarily authorize you to continue the above authorization and assignment in effect after the expiration of the shorter of the periods of one (1) year from such date. I agree that this authorization and assignment shall become effective and cannot be cancelled by me during any of such years, but that I may cancel and revoke by giving to the appropriate management representative of the plant in which I am then employed, and individual written notice signed by me and which shall be postmarked or received by the Company within fifteen days following the expiration of any such year or within the fifteen days following the termination date of any collective bargaining agreement between the Company and the Union covering my employment if such date shall occur within one of such annual periods. Such notice of revocation shall become effective respecting the dues for the month following the month in which

such written notice is given; a copy of any such notice will be given by me to the Secretary-Treasurer of the Local."

2. The free and voluntary written authorization of any employee shall be in force for one (1) year and will renew itself automatically for each additional year or the remaining duration of the Agreement, whichever is lesser, unless revoked by the employee by written notice of revocation to the Company during the period of fifteen (15) days before and fifteen (15) days after the first anniversary date of any such authorization, or the applicable date of the current Agreement, whichever is lesser.

ARTICLE IV

MANAGEMENT

The Union agrees that the usual and customary rights inherent in management including, but not limited to, the right to manage the Company's plant and operations; direct the working forces; hire, discharge and discipline employees; determine means and methods of production; establish standards of efficiency and working rules and regulations; and institute and modify incentive systems are vested exclusively in the Company, except as otherwise expressly specified in this Agreement. In the event of change of equipment, management shall have the right to reduce the working force if, in the sole judgement of management, such reduction of force is fairly required and nothing in this agreement shall be construed to restrict the right of management to adopt, to install, or operate new or improved equipment or methods of operation, subject to the terms of this agreement. The Union and the employees covered by this agreement shall have only such rights as are expressly granted by the Company herein and any rights not expressly so granted are specifically and expressly reserved by the Com-

pany to its own exclusive discretion.

ARTICLE V

WAGES

1. Effective as of the date of this Agreement, all employees covered by this Agreement shall receive an increase of six cents (6¢) per hour.

2. Effective eighteen (18) months from the date of this Agreement all employees covered by this Agreement shall receive an increase of seven cents (7¢) per hour.

3. There shall be no reduction in the wages, hourly or piece-work rate of any employee as a result of this Agreement notwithstanding that the employee is or shall be paid at a scale above the minimum herein provided.

4. Any employee required to do work outside of his regular classification in a lower rated classification for the convenience of the Company, shall, nevertheless, receive his regular classification rate of pay for all time he so works. Moreover, any employee doing work for the convenience of the Company in a classification higher than his regular classification shall receive the higher rate of pay for the time actually worked in such higher classification.

5.a. Unless otherwise agreed, there shall not be introduced in the plant any new system of bonuses, premiums or production incentives unless the Company first gives the Union thirty (30) days notice in writing of the proposed new system. Where such new system is introduced there shall be a trial period of no more than ninety (90) days, unless otherwise agreed by the parties, during which the Union will cooperate in giving the system a fair test. At the end of the trial period, the Union shall have the right to meet with the Company to discuss the new system.

b. Unless otherwise agreed, the Company shall give the

Union thirty (30) days prior notice of its intention to install new or substantially modified equipment. When the new or substantially modified equipment is installed, the Company shall have the right to establish the rates of pay for the operators of said equipment in accordance with the industrial engineering practices then in effect.

There shall be a trial period of no more than two (2) calendar months, unless otherwise agreed by the parties, during which the Union will cooperate in the operation of the new or substantially modified equipment so that the established rate of pay can be fairly tested.

At the end of the trial period, the Union shall have the right to meet with the Company for the purpose of discussing whether the rates of pay for employees operating the new or substantially modified equipment shall be adjusted.

c. The Company shall not exercise its rights under subsections a and b above, where the object thereof is to discriminate against members of the bargaining unit.

6. Employees on incentive or piecework jobs, and who are assigned by the Company to instruct other employees, shall be paid their average hourly earnings for all time spent in training and instructing.

ARTICLE VI

ADDITIONAL WAGE AND HOUR REGULATIONS

1. A work week encompasses six full days, beginning on Monday and ending on Saturday.

2. Effective as of the date of this Agreement, all production employees, with the exception of washroom employees and porters, shall be entitled to an hourly wage rate of one and one-half times their normal hourly rate for the hours worked

each week which exceed forty-five (45) hours.

Effective eighteen (18) months after the date of this Agreement, all production employees, excluding washroom employees and porters, shall be entitled to an hourly wage rate of one and one-half times their normal hourly rate for the hours worked each week which exceed forty-three (43) hours.

3. Effective as of the date of this Agreement, all washroom employees and porters shall be entitled to an hourly wage rate of one and one-half times their normal hourly rate for all hours worked each week which exceed forty-nine (49) hours.

Effective eighteen months after the date of this Agreement all washroom employees and porters shall be entitled to an hourly wage rate of one and one-half times their normal hourly rate for all hours worked each week which exceed forty-seven (47) hours.

4. No split shift will be allowed and each daily schedule of employment shall consist of consecutive hours of work with the exception of time off for a lunch period.

5. Should the Company deem it necessary to change the hours of work on any shift of the shift of any employee they will discuss such change with the Union before it becomes effective. This clause shall not apply to such changes in hours of work which may become necessary due to an emergency.

6. An employee reporting for work as usually scheduled without receiving advance notice to the contrary, shall be guaranteed at least four (4) hours work or four (4) hours pay at his regular hourly rate of pay, unless an emergency occurs beyond the control of the employer.

7. All employees shall be paid weekly within three (3)

business days after the close of the week.

8. The Company agrees to divide all overtime work in each department as equally as possible between the employees of said department depending on required skills.

9. When an employee is called in on emergency work outside the normal work week, he shall receive a minimum of four (4) hours of work at the applicable overtime rate, or if no work is available he shall receive two (2) hours of pay.

ARTICLE VII

HOLIDAYS

1. The following shall be considered as holidays for employees and shall be paid for on the basis of eight (8) hours pay at the employee's regular earnings: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas.

2. To be eligible for holiday pay an employee must have worked his last scheduled work day before and his first scheduled work day after the holiday.

3. Employees who are required to work on a paid holiday shall receive their regular rate of pay for all hours worked on said holiday in addition to holiday pay.

4. All employees who are on the pay roll at the time of signing of this Agreement shall be eligible for paid holidays and all new employees shall become eligible at the completion of their probationary period.

5. When any of the above holidays fall on Sunday, and the day following is observed as the holiday by the Federal Government, the day of observance shall be considered as the holiday under the provisions of this Article.

ARTICLE VIII

VACATIONS

L. All employees covered by this Agreement in the regular employ of the Company shall be eligible for one week's vacation with pay after one year of consecutive employment and two weeks' vacation with pay after five years of consecutive employment.

2. Two years from the effective date of this Agreement, all employees covered by this Agreement in the regular employ of the Company shall be eligible for three weeks' vacation with pay after twenty years of employment.

3. In determining the number of years worked for the purpose of computing vacation time, May 1 is the cut-off date. Employees who have worked more than six months but less than one year as of May 1 are entitled to one day vacation for every three (3) full months worked.

4. Two weeks may be granted consecutively by mutual agreement between the Employer and the employee.

5. The vacation period shall extend from May 1 to November 1.

6. Vacation pay shall be paid in advance of the time the employee starts his vacation.

7. Regular and full time workers who do not receive incentive pay shall have the option of being paid for vacation on the basis of forty (40) hours at their base rate, or an average of their total weekly earnings for the first 13 weeks of the year.

Regular and full time workers who are paid on an incentive basis shall have the option of being paid for vacation on the basis of forty (40) hours at their base rate or an average of their weekly earnings, which shall include the base

rate plus incentives, using the best four (4) weeks out of the first thirteen (13) weeks of the year.

8. An employee with one (1) or more year's service with the Company, who is off work for no more than three (3) months on an approved sick or maternity leave of absence is entitled to a vacation as heretofore provided, however his vacation pay shall be based upon his earnings during the current vacation year, divided by fifty-two (52).

9. Employees with more than one year's service who resign after giving one week's notice will be given credit and remunerated in vacation pay for the pro-rated part of the year. worked past the prededing May 1st. Employees with more than one year's service who are laid off because of a reduction in the work force will be credited for the pro-rated part of the year worked and unless returned to work by the first day of May following their layoff, will be remunerated in vacation pay for such time on or around May 1. This shall not apply to employees who are discharged for cause. For the purpose of computing vacation pay three (3) months employment is equal to one day vacation pay.

10. An April 15, there shall be distributed throughout the plant by the Shop Steward, a vacation schedule on which the employee shall designate, according to departmental seniority, the period during which the vacation is desired. The schedule shall be c mpleted on or before April 23 and on that date it shall be submitted to the Company. On or before April 27 the Company shall return the schedule to the Shop Steward and shall indicate any change desired by the Company by reason of hardship or difficulty that the schedule may impose upon the Company. Changes made by the Company shall be subject to

investigation by the Union. The vacation schedule shall be finally determined on or before May 1 and shall be posted upon the bulletin board.

11. An employee taking his vacation during a period which includes a paid holiday must be paid for said holiday, in addition to his vacation pay or be granted an extra day off with pay in lieu thereof.

ARTICLE IX

Rest Periods

1. Effective as of the date of this Agreement, all employees covered by this Agreement shall be given a ten (10) minute rest period in the morning and five (5) minute rest periods in the afternoon.

2. Effective eighteen months after the date of this Agreement, the afternoon rest period will be increased to ten (10) minutes.

ARTICLE X

SENIORITY

1. When as employee has successfully completed the probationary period he shall be credited with length of service from the date of hire.

2. When layoffs become necessary due to lack of work, seniority by department shall apply, and where skill, ability and physical fitness are relatively equal, the least senior employee shall be laid off. An employee thus laid off from that department shall then have the right to displace the least senior employee in the plant provided he or she can properly perform the work of that employee. Employees thus laid off from a department shall have first call on jobs which become available in the department from which they were laid off.

3. When there is an increase in the work force after a layoff, the last employee laid off shall be the first employee rehired, providing the employee can properly perform the work of the job or jobs which are open.

4. Seniority shall be accumulated during absence due to illness, accidents, accidents occuring during the course of regular employment for the Company, layoffs and pregnancy, for a period of one (1) year. However, in maternity cases, the employee must be available for work within three months after the termination of pregnancy, unless a doctor indicates that a longer recuperative time is necessary.

5. Within thirty (30) working days after the effective date of this Agreement the Company will furnish the Union with and will post a seniority list of all employees. showing their Company seniority. Employees shall have thirty (30) calendar days after posting of such list to object thereto, after which the list will be final.

6. An employee shall lose his seniority for any of the following reasons:

a. Voluntarily quits.

b. Is discharged for cause.

c. If he does not return to work within three (3) working days after receipt of written notice by registered or certified mail, of recall from layoff.

d. Failure to report for work on schedule following a vacation or leave of absence, unless unable to do so as the result of bona fide illness or injury attested by a doctor's certificate, or other cause acceptable to the Company.

e. Obtaining a leave of absence under false representations.

f. Absence without notification for a period

of two (2) consecutive working days unless prevented from giving notice by just cause acceptable to the Company. In such case the employee shall be considered to have voluntarily quit.

g. Engaging in gainful occupation during a leave of absence or using a leave for a reason other than that for which the leave was granted.

h. Layoff in excess of one (1) year.

i. Any false statement on an application for employment.

7. The Shop Stewards, up to three, who are designated by the Union and who are employed by the Company shall head the seniority list of the plant. This shall apply only to a reduction of working force involving layoffs. Upon expiration of their terms of office, all such officers shall revert to their respective original positions on the seniority list, based on date of hire.

ARTICLE XI

HEALTH AND SAFETY

1. The Company agrees to take all necessary and reasonable steps to provide properly ventilated working areas for its employees.

2. The Company shall provide areas for dressing, and rest room purposes, and for towels, soap, a cot with clean sheets and pillow cases. Also within eighteen (18) months of date of thes Agreement, the Company will provide clean and sanitary eating conditions.

3. The Company shall comply with all health and sanitary regulations of the State of Maryland.

4. The parties hereto agree that during the term of this Agreement, the Shop Steward and representative of management will meet for the purposes of discussing and improving

health and safety conditions. It is understood that such meetings will be held upon request of either party, at a time mutually convenient to both parties.

5. Where uniforms are required to be worn by the employees, such uniforms shall be furnished by the Company and shall be laundered and mended at the Company's expense.

ARTICLE XII

GRIEVANCE MACHINERY

1. For the purposes of this Agreement, a grievance is defined as a complaint, dispute or controversy between the parties as to the interpretation or application of this Agreement.

2. The Union shall advise the Company of the person and persons, either appointed or elected by the Union or the employees, as a Shop Steward, and the Company agrees to meet with said Shop Steward for the purposes of ascertaining the facts concerning complaints or grievance, and the presentation of such complaints or grievance employees may have.

3. The Company agrees that it will not discriminate against any employee for Union activities or for reporting any violation of this Agreement.

4. The following stages of the grievance procedure shall be observed in processing grievances:

a. The grievance shall be reduced to writing and presented to a Company representative within five (5) days of the date of occurrance.

b. The first step of the grievance procedure shall be between the Steward and Company representative.

c. If the Steward and Company representative are unable to adjust the grievance within five (5) days after

it is discussed, the Business Agent or officer of the Union shall try to adjust the grievance with the representative of the Company.

d. If the grievance is still not settled satisfactorily within ten (10) days after it reaches the second stage of the grievance procedure, the matter may be referred to arbitration.

e. Notice of intent to proceed to arbitration must be given in writing within ten (,0) days of the Company's answer in the final step of the grievance procedure. The parties shall then arrange a mutually satisfactory time to present the case in arbitration, but in no event shall either the Employer or the Union cause this time to be more than thirty (30) days from the date of notice of intent to proceed to arbitration. The decision of the Arbitrator shall be final and binding upon both parties, and the cost is to be borne equally by both parties.

5. A Board of Arbitration shall be consitutued as follows: One member is to be selected by the Union, one by the Employer and the two shall select a third. In the event they are unable to select a third, the third arbitrator shall be selected through the American Arbitration Association in ac-aordance with its established practices. Said Board shall have no power to subtract from or, add to, or otherwise modify the terms of this Agreement.

6. No grievance shall be processed on Company time except when mutually agreeable to both parties; however, notice of a pending grievance may be conveyed as soon as possible after the occurrance of the event or circumstance complained of in the interests of expediting settlement, and employees

shall, upon request, and whenever possible, be afforded reasonable time off from work to reduce a grievance to writing.

7. Arbitrable grievances shall be arbitrated singly unless the parties agree mutually to arbitrate more than one grievance at a time.

8. It is agreed between the parties that the only matters subject to arbitration shall be any and all disputes growing out of the interpretation, construction and application of the terms of this Contract.

9. The Business Representative of the Union shall, upon notification, have the right to visit the plant for the purpose of investigating pending grievances and where such grievances involve wages, shall also have the right to inspect the pay record of the employee or employees involved. The Business Representative shall not interfere in any way with the progress of work upon such visits.

ARTICLE XIII

DISCHARGE

The Company shall have the right to discharge any employee without notice for just cause (such as, but not limited to, dishonesty, intoxication on duty, insubordination, fighting on duty, continued absence or tardiness, or deliberate and aggravated misconduct). The Company agrees to submit to the Union written notice of any discharge and the reason therefore. The Company shall tender any wages and compensation due to a discharged employee as of his last working day. If the Union believes any discharge to be unjustified, such discharge may be made the subject of the grievance and arbitration procedures provided for elswhere in this Agreement.

ARTICLE XIV

STRIKES AND LOCKOUTS

During the term of this Agreement, the Company agrees to refrain from any lock-out and the Union agrees there will be no strike or walk-out of any kind, and no boycott, picketing, work stoppage, slowdown or any other type of interruption of work or interference with the Company's business by the Union or its members.

ARTICLE XV

GENERAL PROVISIONS

1. In the event there appears to be a misunderstanding as to the supervision of any or all of the employees covered by this Agreement, upon request of the Union, the Company agrees to furnish in writing the names of any such supervisory employees and the extent of his or their authority.

2. The Company agrees that it will not enter into any written or verbal agreement with any of its employees covered by this Agreement, the provisions of which are inconsistent with or which, in any way, modify or waive any of the provisions of this Agreement. It is understood, however, that it shall not be inconsistent with or in violation of this Agreement for the Employer to pay any rates of pay in excess of the wage schedules set forth herein.

3. The Company shall have the right to draft a reasonable set of plant rules.

4. It is agreed by the parties that if any Federal, State or Municipal minimum wage law is enacted or amended requiring an increase in the wage rates of any employee covered by this Agreement such wage rate increase shall be chargeable against the schedule of wage increases as is set forth in this Agreement for such employee. It being the intention of the

parties that if the legal minimum wage exceeds the wage being paid to an employee, the future wage increases provided for herein shall not be operative until the sum of increases equals the legal minimum wage rate as established or amended.

5. In the event any of the terms or provisions of this Agreement shall be or become invalid or unenforceable by reason of any federal, State or Municipal law, directive, order, rule or regulation now existing or hereafter enacted or issued, or any decision of court of last resort, such invalidity or unenforceability shall not affect or impair any other terms or provisions hereof.

6. The Company agrees that it will not discriminate in the hiring, promoting, upgrading, or transferring of any applicant or employee because of race, creed, color or religious belief.

ARTICLE XVI

TERM OF CONTRACT

The within Agreement shall be in full force and effect from the 3rd day of December, 1965, until the 2nd day of December, 1968, both dates inclusive, and shall continue thereafter from year to year unless sixty (60) days notice in writing be given by either party to the other, prior to the expiration date, or any subsequent expiration date, of the desire to cancel, change or modify said contract or any terms thereof.

IN WITNESS WHEREOF, the parties hereto intending to be legally bound hereby, have hereunto set their hands and seals the day and year first above written.

FOR THE COMPANY	FOR THE UNION
s/ G. Howard Dawson	s/ Margaret toney
President	s/ Fannie Green
	s/ Cleveland Harris President - Local 195

LOCAL 195
AFL-CIO LAUNDRY AND DRYCLEANING INTERNATIONAL UNION
2650 MARYLAND AVENUE
BALTIMORE, MARYLAND 21218

March 17, 1966

TO: THE EXECUTIVE BOARD AND ALL MEMBERS OF LOCAL 195

TO: THE N.A.A.C.P., C.O.R.E., S.C.L.C., CHURCH AND CIVIC ORGANIZATIONS

FROM: Cleveland Harris, President - Local 195

Dear Brothers and Sisters:

Prior to becoming affiliated with the Laundry and Dry Cleaning International Union, my efforts were directed towards struggling actively for Civil and Human Rights for all, without regard to race, creed, color, or nationality. I became affiliated with the Laundry Workers Union officially as of June 22, 1964. I had been assisting in my spare time in organizing Laundry Workers since March of the same year, however I received no pay, not even gasoline expenses, until June. I expected none.

Having served as an International Representative from June 1964 through May 1965, and during this time having been one of the first dues-paying members of Local 195, I was elected without opposition to serve a three year term as Local 195 President on May 4, 1965. Even though I was still an International Representative I attempted to carry out the functions of President of Local 195 immediately. A conflict between the two offices which I was holding arosed, due to having two different "bosses". The International Union was paying my salary, Clem Regner who was and still is, International Director of Organization was one of my two "bosses", on the other hand, you, the members of Local 195 who had elected me as your President was and still is my boss. The first real conflict arosed between Clem Regner and I over his attempts to deal behind Local 195's back during June of 1965 with the management of Aristocrat Linen Supply Company. Clem Regner had, along with Sam Begler, the International Union's Secretary-Treasurer, already met with the management of Bugle Coat, Apron & Linen Supply Company in New York City and made deals to "sell out" the Bugle Employees. I was left with that head-ache. They had agreed to talk the Bugle employees into a 5 year contract with little or no benefits over the 5 year period. I was left with this discontent on the part of Bugle employees. Some of the Bugle employees made several calls to the N.A.A.C.P., and in turn I was asked by the N.A.A.C.P., "What is happening at Bugle"? I attempted many times to at least get the management of Bugle to give the members of Local 195 employed by them, the few things that were promised to them. I don't have to tell you how hard I have fought to assure our members in every plant respect and dignity. I don't have to remind anyone who has ever had a grievance, of the uncompromising-firmness I have exhibited before the management of every plant, in order to settle the grievances to the satisfaction of the aggrieved members.

The second conflict occured on November 8, 1965 between Clem Regner and I. This conflict was the same as the Aristocrat, only this time it was Archer Laundry that Regner was "dealing" behind Local 195's back with. This was the last straw! Clem Regner knew this, so he plotted with Clayton James in hopes that Clayton James would help him to get rid of me. Regner had been trying for almost 6 months to get rid of Clayton James, of course I had prevented this, and Clayton told me about Clem Regner's plan, so I wrote a letter to the International Union and told them all of the reasons why Clem Regner was of no further use to this

Local Union. The Executive Members of Local 195, and I met with the International President and Secretary-Treasurer in Washington, D.C., and it was agreed that Clem Regner would work in some other area, other than Baltimore. There was also an attempt by the International to paint Regner's picture as the perfect "good guy", Of course some of the Board members of Local 195 were witnesses to Regner's actions, so the paint was on the thin side.

Immediately after the International pulled Regner out of Baltimore, the International began a "get rid of Cleveland Harris campaign" that is still going on. I, as you all are aware, asked for permission from the International Union to keep our dues at $3.00 a month instead of raising them to $4.00 per month for at least six months. This permission was granted by the International, however our Local could not afford to pay the International Union its per capita tax each month. In fact the Local could not even afford to pay my salary each week. I have gone almost 5 weeks without my pay. The International started to pressure for money that this Local does not have. When I revealed to Bugle employee--members of Local 195 the sell out between the International and management of Bugle; this really did make the International angry. My trust in this International Union has been shattered by acts committed against the workers in the Laundry and Dry Cleaning plants throughout the country by International officers of this International Union. For example even though the majority of the dues paying members of this International Union are Negroes, this International Union does not have one single Negro Vice-President. There are nine International Vice-Presidents, and neither of the Nine is a Negro. The only Negro on the International Board is a "Trustee", who doesn't even sit on every International Board Meeting. Yet there are 14 members altogether on the International Board, and only one of the 14 is to represent EQUALITY on that Board.

I had hoped that this fight would not have to come up at this time, but I was left with no choice. The International needs a good house cleaning. The International needs to stop "sleeping in bed" with the managements of these plants just for the sake of signing a contract in order to collect the hard-earned money of Laundry and Dry Cleaning Workers. I have served notice on the International by way of telephone on this day that I will recommend to the Executive Board and every member of Local 195, that members of Local 195 cast out the Charter issued by the AFL-CIO Laundry and Dry Cleaning International Union and charter our own Union with monthly dues of $2.75 per month. There is no reason why members of this Local Union should pay for the cost of airplane trips, hotel, restaurant, liquor and other pleasures enjoyed by International Officers, without true representation to the members. I do not know exactly how much money the International spends each year in entertainment, but I think that some type of benefit could be put into effect by the International covering all members of every Local Union of the International off of money spent for pleasures by two of of the International officers.

My record in seeking to uplift the economic, social and political conditions of oppressed people, is an open book. This record did not start with the AFL-CIO Laundry and Dry Cleaning International Union, nor will it end with the AFL-CIO Laundry and Dry Cleaning International Union. I know that the International Union is going to put up a big fight; I know that the smell of green dollar bills is enough to drive them to the point of trying anything to keep members of this Local under their control. I ask you to remain "cool". I have been a free man all my adult life. Whenever I have seen the freedom of others denied or threatened, I have raised my voice in protest, from the West Coast of the United States to the East Coast. I have lost in some fights, I have won in others, however I have not run from a single one. I will not in this one. I would rather fight than to become a "YES MAN", or a "PUPPET", because both are slaves. I would rather die a "free-fighter" right at this minute, than to live a hundred years as a "YES MAN" Slave! My interest is in you, each and everyone.

MERCURY FOUNDATION, 1965

Photographs: Original Order

Box 475
Folder 21

4/10

March 31, 1965

Robert Collins, Esq.
2211 Dryades Street
New Orleans, La.

Re: The Mercury Foundation

Dear Bob,

I assume you are very busy. I hope you have received some money from SEDF.

What is the answer on the question of a Louisiana non-profit corporation filing in Mississippi?

If the fees are relatively small, of course, use the C T C System of Houston.

I hope we get together soon.

Regards,

Carl Rachlin
General Counsel

cc: Mr. Richard Haley

CR:hdl

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

MAR 25 1965

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

March 23, 1965

TELEPHONE
523-5197

Carl Rachlin, Esq.
CORE
38 Park Row
New York 38, New York

Re: The Mercury Foundation

Dear Carl:

I have just finished talking long-distance to Mr. Tucker of the C T Corporation System, Houston, Texas (WX 9200 - Free Long Distance Number). He informed me that in Mississippi Code, 1942 Sec. 5319, 5322. He is mailing me more information on it and his company's fees for acting as our agents in the state. Are we interested in such an arraignment?

Yours sincerely,

COLLINS, DOUGLAS & ELIE

BY: Robert F. Collins/vmg

RFC/vmg

Dear Bob
~~On C T Corp~~
As to C T Corporation
~~System~~

For
RCB

vmg

Dear Bob

City Hall

I assume you are very busy. I hope you have received some money from SEDF. What is the answer on the question of a ~~non~~ Louisiana non-profit corporation filing in Mississippi? If the fees are relatively small, of course, use the CTC System of Trust.

Regards I hope we get together

Regards

vm

April 22, 1965

Collins, Douglas & Elie
Attorneys and Counsellors at Law
2211 Dryades Street
New Orleans, Louisiana 70113

In re: Mercury Foundation

Dear Bob, Nils and Lolis:

We are all terribly pleased that Mercury Foundation is in business. It has great possibilities, and I know we'll put it to good use.

The South Carolina registration is important because Jim McCain will be using two cars as part of the voter project there. It is also anticipated that northern Florida should be brought into the orbit of the Mercury Foundation as well as, of course, Mississippi.

Many thanks for what you have done. I am anxious to see you all soon.

What is the latest on St. Tammany?

Regards.

Sincerely,

Carl Rachlin
General Counsel

CR:JG

ARTICLES OF INCORPORATION

THE MERCURY FOUNDATION

UNITED STATES OF AMERICA

STATE OF LOUISIANA

PARISH OF ORLEANS

* *

BE IT KNOWN, That on this sixteenth day of April in the year of Our Lord one thousand nine hundred and Sixty-five.

BEFORE ME, NILS R. DOUGLAS, a Notary Public, duly commissioned and qualified, in and for the Parish of Orleans, State of Louisiana therein residing, and in the presence of the witnesses hereinafter named and undersigned:

PERSONALLY CAME AND APPEARED: STEVEN H. RUBIN, LOLIS E. ELIE and ROBERT F. COLLINS, whose names are hereunto subscribed, all of full age, who severally declared that, availing themselves of the benefits and provisions of the Constitution of the State of Louisiana and the laws of said State relative to the organization of non-profit corporations, and particularly of the provisions of R.S. 12:101-155 incl., they have united to form, and do by these presents form and organize themselves, as well as all others persons who may hereafter join or become associated with them or their successors, into a non-profit corporation for the objects and purposes and under the covenants, stipulations and agreements following, to-wit:

ARTICLE I

The name and title of this corporation shall be The Mercury Foundation and under and by said name, unless sooner dissolved in accordance with law, it shall exist and continue, and shall have and enjoy corporate existence and successions, for a period of ninety-nine (99) years from and after the date of this act, during which time it, generally shall possess all the powers, rights, privileges, capacities and immunities which non-profit corporations are authorized, and may hereafter be authorized, to possess under the Constitution and laws of this State, and particularly under Title 12, Sec. 101 et seq., Louisiana Revised Statutes.

ARTICLE II

The domicile of this corporation shall be Orleans Parish, State of Louisiana, and the location and post office address of its registered office shall be 2211 Dryades Street, New Orleans, Louisiana.

ARTICLE III

This corporation is organized, and it shall be operated, exclusively for charitable, scientific, literary and educational purposes, including purchasing and acquiring property, or other things of value, for charitable, scientific, literary and educational purposes. It shall have the power to buy, sell, lease, or mortgage property of all kinds and description, including real estate, automobiles, office furniture and equipment and other personal property. It shall have the power to borrow or to lend money and to sign or require notes or other evidence of debt for the same. In furtherance of said purposes, this corporation shall be authorized to render financial assistance and make contributions to:

(a) the poor and needy;
(b) educational institutions;
(c) character building and humanitarian institutions operated on a non-profit basis; and
(d) organizations engaged in the advancement of spiritual development or scientific research.
(e) and worthy students to further their education

as well as for other charitable, scientific, literary and educational purposes. Such financial assistance and contributions may be made either by direct aid or through recognized agencies.

No part of the net earning of this corporation shall ever inure to the benefit of any private shareholder or individual; and this corporation shall never carry on propaganda, or otherwise attempt to influence legislation.

ARTICLE IV

The officers of this corporation shall consist of a president, who shall be a member of the board of directors, a vice-president, a secretary-treasurer and such other officers

as the directors may elect or appoint. Any two or more offices may be held by the same person, except the office of president and secretary. The president, the vice-president, the secretary-treasurer are to be elected annually by the board of directors and shall serve for one year or until their successors are duly elected and installed.

ARTICLE V

The corporate powers and management of this corporation shall be vested in, and exercised by a board of directors of three (3) members, to be elected annually, at a general meeting of the members, on April 16th in each year, beginning with the year 1966 to be held at the registered office of the corporation , or at such other place within or without the State of Louisiana, as may be provided in the by-laws.

At all elections for directors, as well as at all other meetings of the members, each member, whose dues are paid for the current fiscal year shall be entitled to one vote, and a majority of all such members shall decide all elections or any question coming before any such meeting.

Any vacancy occurring among the directors of this corporation, by death, resignation or otherwise, shall be filled, by election for the unexpired term, at the next regular or special meeting of the board of directors.

Failure to elect directors annually shall not dissolve this corporation nor impair its corporate existence or management, but the directors then in office shall remain in office until their successors shall have been duly elected and installed.

A majority of the directors shall constitute a quorum; and a quorum shall be necessary to consider any question that may come before any meeting of the directors. If a quorum is not present at a duly assembled meeting, a majority of those present may adjourn the meeting from time to time, but may not transact any other business until a quorum is secured. A quorum being present, the affirmative vote of a majority of the directors present shall be necessary to decide any questions.

The board of directors shall have the power to make, alter and annul such by-laws, rules and regulations for the government of the affairs of this corporation as it may deem proper.

Special meetings of the members of this corporation may be called at such times and places as determined by the board of directors or by the president.

Meetings of the board of directors may be held outside of the State of Louisiana

ARTICLE VI

The full names and post office addresses of the corporation's registered agents are:

Lolis E. Elie	2211 Dryades Street New Orleans, Louisiana
Robert F. Collins	2211 Dryades Street New Orleans, Louisiana

ARTICLE VII

This corporation is to be organized on a non-stock basis. There shall be but one class of membership. The subscribers to these Articles of Incorporation shall be the first members of this corporation. Other members may be elected at any time, by a majority vote of those who are then members, and whose dues are paid for the current fiscal year. The fiscal year of this corporation shall be from the 16th day of April in each year until the 15th day of April in the following year; and each member shall pay annual dues of $1.00 for each fiscal year, or fraction thereof, for which he is a member of this corporation. Each member of this corporation, upon the payment of dues as above set forth shall be entitled to a certificate of membership for the fical year for which such dues are paid, the certificates of membership to be signed by the president or the vice-president and by the secretary. Members may resign by written resignation submitted to the board of directors, and such resignations shall be effective when accepted by the board of directors.

ARTICLE VIII

Membership dues, as paid, in as well as contributions made, from time to time, to this corporation, for its use in furtherance of its objects and purposes, may be used promptly, in the discretion of the board of directors, to carry out the objects and purposes of this corporation, or may be employed or invested so that the revenues therefrom may be used to carry out the objects and purposes of this corporation, provided, however, that said investments may be converted thereafter into cash, and the proceeds used, as required, to carry out the objects and purposes of this corporation.

ARTICLE IX

The names and post office addresses of the subscribers to these Articles of Incorporation are:

Steven H. Rubin	7312 Maple Street New Orleans, Louisiana
Lolis E. Elie	2211 Dryades Street New Orleans, Louisiana
Robert F. Collins	2211 Dryades Street New Orleans, Louisiana

The signing of these Articles of Incorporation by the said incorporators shall act as their election to membership in this corporation.

ARTICLE X

The first board of directors shall be composed of Steven H. Rubin, Lolis E. Elie and Robert F. Collins, who shall serve until the first annual meeting of the membership of the corporation or until their successors are elected and qualified.

ARTICLE XI

No member of this corporation shall ever be held liable or responsible for contracts, debts, or defaults of this corporation in any further sum than the unpaid dues, if any, owing by him or her to the corporation, nor shall any mere informality in organization have the effect of rendering these Articles of Incorporation null or of exposing the members to any liability other than as above provided.

ARTICLE XII

In the event of liquidation of this corporation all of its assets shall be converted to cash and the proceeds thereof devoted to the objects and purposes of the corporation. No member of the corporation shall profit from said assets.

THUS DONE AND PASSED in duplicate original in my office in New Orleans, Louisiana, on the day, month and year herein first above written, in the presence of Mrs. Viola Mae Green and Miss Evelyn Williams, competent witnesses, who hereunto sign their names with the said appearers and me, Notary, after reading of the whole.

STEVEN H. RUBIN

LOLIS E. ELIE

ROBERT F. COLLINS

WITNESSES:

MRS. VIOLA MAE GREEN

MISS EVELYN WILLIAMS

NILS R. DOUGLAS, NOTARY PUBLIC

From the desk of

- [x] ROBERT F. COLLINS
- [ ] NILS R. DOUGLAS
- [ ] LOLIS E. ELIE

file in mercury corporation

MAR 17

Carl,

What's the score on the papers I sent you re the non-profit corporation?

Bob

COLLINS, DOUGLAS & ELIE

ATTORNEYS & COUNSELLORS AT LAW

201 DOUGLASS LIFE INSURANCE BUILDING

2211 DRYADES STREET

NEW ORLEANS, LOUISIANA 70113

523-5197

March 17, 1965

Robert Collins, Esq.
2211 Dryades Street
New Orleans, La.

Dear Bob,

I am sorry for the delay in replying to your letter about "The Mercury Foundation." It is an excellent set of papers and the only thought I have relates much more to the conception of a non-profit corporation as distinct from a stock corporation. Before you file these papers, I would suggest someone find out for you whether a Louisiana, or for that matter any other state non-profit corporation may file a certificate to do business in Mississippi. This is the only real concern I have.

Insofar as the certificate itself is concerned, the only suggestions I would make in article 3 is to add a power to borrow money and perhaps give scholarships, if you think that is not included under the term "financial assistance."

Do you think it advisable that all the incorporators be people identified with the civil rights movement? Might not this make it that much more difficult to pass the scrutiny of the Mississippi officials supervising the issuance of a certificate to do business? You might consider whether the only people who appear as part of the corporation should be persons who have no obvious connection with civil rights organizations.

I return to you the original and keep a copy for myself, and wish to express to you my appreciation for what you have done.

See you soon.

Best regards,

Carl Rachlin
General Counsel

Enc./
CR:hdl

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

MAR 5 1965

March 3, 1965

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

Mr. Carl Rachlin
38 Park Row
New York 38, New York

Dear Carl:

We received your letter concerning the formation of the Non-Profit organization and we enclose herewith a rough draft of such a corporation.

We have also sent a letter to the Secretary of State requesting that the proposed name of the corporation be reserved for us.

One of the reasons for the delay in completing this matter is that we were expecting a copy of a charter from Howard Moore, whom, we understand, formed such a corporation for Snick. Since Howard did not send us the papers as promised we have proceeded on our own.

You may feel free to make any changes that you see fit and as soon as you are through with it we will file same and ~~receive~~ record charter.

Yours sincerely,

COLLINS, DOUGLAS & ELIE

BY: Robert F. Collins

RFC/vmg

ENCLS: 2

ARTICLES OF INCORPORATION OF:
THE MERCURY FOUNDATION

UNITED STATES OF AMERICA
STATE OF LOUISIANA
PARISH OF ORLEANS

* *

BE IT KNOWN, That on this fifteenth day of March in the year of Our Lord one thousand nine hundred and Sixty-five.

BEFORE ME, NILS R. DOUGLAS, a Notary Public, duly commissioned and qualified, in and for the Parish of Orleans, State of Louisiana therein residing, and in the presence of the witnesses hereinafter named and undersigned:

PERSONALLY CAME AND APPEARED: RICHARD HALEY, DAVE DENNIS and DORATHA SMITH, whose names are hereunto subscribed, all of full age, who severally declared that, availing themselves of the benefits and provisions of the Constitution of the State of Louisiana and the laws of said State relative to the organization of non-profit corporations, and particularly of the provisions of R.S. 12:101-155 incl., they have united to form, and do by these presents form and organize themselves, as well as all others persons who may hereafter join or become associated with them or their successors, into a non-profit corporation for the objects and purposes and under the covenants, stipulations and agreements following, to-wit:

ARTICLE I

The name and title of this corporation shall be The Mercury Foundation and under and by said name, unless sooner dissolved in accordance with law, it shall exist and continue, and shall have and enjoy corporate existence and successions, for a period of ninety-nine (99) years from and after the date of this act, during which time it, generally, shall possess all the powers, rights, privileges, capacities and immunities which non-profit corporations are authorized, and may hereafter be authorized, to possess under the Constitution and laws of this State, and particularly under Title 12, Sec. 101 et seq., Louisiana Revised Statutes.

ARTICLE II

The domicile of this corporation shall be Orleans Parish, State of Louisiana, and the location and post office address of its registered office shall be 2211 Dryades Street, New Orleans, La.

ARTICLE III

This corporation is organized, and it shall be operated, exclusively for charitable, scientific, literary and educational purposes, including purchasing and acquiring property, and receiving and administering donations of money, property, or other things of value, for charitable, scientific, literary and educational purposes. It shall have the power to buy, sell, lease, or mortgage property of all kinds and description, including real estate, automobiles, office furniture and equiptment and other personal property. In furtherance of said purposes, this corporation shall be authorized to render financial assistance and make contributions to:

(a) the poor and needy;
(b) educational institutions;
(c) character building and humanitarian institutions operated on a non-profit basis; and
(d) organizations engaged in the advancement of spiritual development or scientific research.

as well as for other charitable, secientific, literary and educational purposes. Such financial assistance and contributions may be made either by direct aid or through recognized agencies.

No part of the net earning of this corporation shall ever inure to the benefit of any private shareholder or individual; and this corporation shall never carry on propaganda, or otherwise attempt to influence legislation.

ARTICLE IV

The officers of this corporation shall consist of a president, who shall be a member of the board of directors, a vice-president, a secretary-treasurer and such other officers as the directors may elect or appoint. Any two or more offices may be held by the same person, except the office of president and secretary. The president,

the vice-president, the secretary and the treasurer are to be elected annually by the board of directors and shall serve for one year or until their successors are duly elected and installed.

ARTICLE V

The corporate powers and management of this corporation shall be vested in, and exercised by a board of directors of five (5) members, to be elected annually, at a general meeting of the members, on March 15th in each year, beginning with the year 1965 to be held at the registered office of the corporation, or at such other place within or without the State of Louisiana, as may be provided in the by-laws.

At all elections for directors, as well as at all other meetings of the members, each member, whose dues are paid for the current fiscal year shall be entitled to one vote, and a majority of all such members shall decide all elections or any question coming before any such meeting.

Any vacancy occurring among the directors of this corporation, by death, resignation or otherwise, shall be filled, by election for the unexpired term, at the next regular or special meeting of the board of directors.

Failure to elect directors annually shall not dissolve this corporation nor impair its corporate existence or management, but the directors then in office shall remain in office until their successors shall have been duly elected and installed.

A majority of the directors shall constitute a quorum; and a quorum shall be necessary to consider any question that may come before any meeting of the directors. If a quorum is not present at a duly assembled meeting, a majority of those present may adjourn the meeting from time to time, but may not transact any other business until a quorum is secured. A quorum being present, the affirmative vote of a majority of the directors present shall be necessary to decide any questions.

The board of directors shall have the power to make, alter and annul such by-laws, rules and regulations for the government of the affairs of this corporation as it may deem proper.

Special meetings of the members of this corporation may be called at such times and places as determined by the board of directors or by the president.

Meetings of the board of directors may be held outside of the State of Louisiana

ARTICLE VI

The full names and post office addresses of the corporation's registered agents are:

Richard Haley	1900 Philip Street New Orleans, Louisiana
Robert F. Collins	2211 Dryades Street New Orleans, Louisiana

ARTICLE VII

This corporation is to be organized on a non-stock basis. There shall be but one class of membership. The subscribers to these Articles of Incorporation shall be the first members of this corporation. Other members may be elected at any time, by a majority vote of those who are then members, and whose dues are paid for the current fiscal year. The fiscal year of this corporation shall be from the 15th day of March in each year until the 14th day of March in the following year; and each member shall pay annual dues of $1.00 for each fiscal year, or fraction thereof, for which he is a member of this corporation. Each member of this corporation, upon the payment of dues as above set forth, shall be entitled to a certificate of membership for the fiscal year for which such dues are paid, the certificates of membership to be signed by the president or the vice-president and by the secretary. Members may resign by written resignation submitted to the board of directors, and such resignations shall be effective when accepted by the board of directors.

ARTICLE VIII

Membership dues, as paid in, as well as contributions made, from time to time, to this corporation, for its use in furtherance of its objects and purposes, may be used promptly, in the discretion of the board of directors, to carry out the objects and purposes of this corporation, or may be employed or invested so that the revenues therefrom may be used to carry out the objects and purposes of this corporation, provided, however, that said investments may be converted thereafter into cash, and the proceeds used, as required, to carry out the objects and purposes of this corporation.

ARTICLE IX

The names and post office addresses of the subscribers to these Articles of Incorporation are:

Richard Haley	1900 Philip Street New Orleans, Louisiana
Dave Dennis	1900 Philip Street New Orleans, Louisiana
Doratha Smith	2801 Metropolitan Street New Orleans, Louisiana
Lolis E. Elie	3700 Cadillac Street New Orleans, Louisiana
Robert F. Collins	2406 New Orleans Street New Orleans, Louisiana

The signing of these Articles of Incorporation by the said incorporators shall act as their election to membership in this corporation.

ARTICLE X

The first board of directors shall be composed of Richard Haley, Dave Dennis, Doratha Smith, Lolis E. Elie and Robert F. Collins, who shall serve until the first annual meeting of the membership of the corporation or until their successors are elected and qualified.

ARTICLE XI

No member of this corporation shall ever be held liable or responsible for contracts, debts, or defaults of this corporation

in any further sum than the unpaid dues, if any, owing by him or her to the corporation, nor shall any mere informality in organization have the effect of rendering these Articles of Incorporation null or of exposing the members to any liability other than as above provided.

ARTICLE XII"

In the event of liquidation of this corporation all of its assets shall be converted to cash and the proceeds thereof devoted to the objects and purposes of the corporation. No member of the corporation shall profit from said assets.

THUS DONE AND PASSED in duplicate original in my office in New Orleans, Louisiana, on the day month and year herein first above written, in the presence of Mrs. Vida Mae Green and Miss Brenda Row, competent witnesses, who hereunto sign their names with the said appearers and me, Notary, after reading of the whole.

RICHARD HALEY

DAVE DENNIS

DORATHA SMITH

WITNESSES:

MRS. VIOLA MAE GREEN

+
MISS BRENDA ROW

NILS R. DOUGLAS, NOTARY PUBLIC

hold for 1 wk

February 9, 1965

Collins, Douglas & Elie, Esqs.
2211 Dryades Street
New Orleans, La. 70113

Dear Bob, Nils and Lolis,

George Wiley has been asking me about the Louisiana corporation. As we discussed, the corporation should have fairly broad general powers, one of which would be to own and to rent vehicles. More important, my information is that out-of-state non-profit corporations are now allowed to file certificates of doing business in Mississippi, so I guess this ought to be a stock corporation. The need is great. I hope you can take care of this very soon.

I spoke to Murphy yesterday morning and told him we would pay his transportation on this. I will send a check soon.

Did you receive the motion for rehearing on Cox?

Regards,

Carl Rachlin
General Counsel

CR:jp

MISCELLANEOUS LEGAL NOTES, N.D.
1964-1965

Box 42
Folder 22

Please Retain Original Order

MISSISSIPPI DISCRIMINATION CASES, 1964-1965

Box 45
Folder 23

Please Retain Original Order

[enclosed, Walter to Kinoy, 1964, September 2]

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
BILOXI DIVISION

STATE OF MISSISSIPPI VS. STEPHEN MILLER	CRIMINAL ACTION NO. 8353
STATE OF MISSISSIPPI VS. BARRY GOLDSTEIN	CRIMINAL ACTION NO. 8354
STATE OF MISSISSIPPI VS. DAVID CLEVERDON	CRIMINAL ACTION NO. 8355
STATE OF MISSISSIPPI VS. J. C. HIGGS	CRIMINAL ACTION NO. 8356
STATE OF MISSISSIPPI VS. WILLIE REESE	CRIMINAL ACTION NO. 8357

STATEMENT ON BEHALF OF MISSISSIPPI STATE BAR

MAY IT PLEASE THE COURT:

On July 24, 1964, when amicus curiae was permitted by Order of the Court, to appear in the first three of the above-entitled and numbered causes, and later permitted to appear as such in all cases of like nature filed in this Court, petition of three (3) New Orleans Attorneys, viz: Nils R. Douglas, Robert F. Collins, and Lolis E. Elie, for admission to the Bar of this Court pro hac vice and for waiver of local counsel rule, was on file in Causes Nos. 8353, 8354, and 8355. After a brief discussion and upon application therefore, said causes were continued for hearing in the United States Court in the City of Jackson, Mississippi, on, to-wit: August 15, 1964, and removal-petitioners, viz: Stephen Miller, Barry Goldstein, and David Cleverdon, required to advise the Court and Counsel of record for the State of Mississippi and for the State Bar Association of the names and addresses of the Attorneys who would represent the said removal petitioners on August 15, 1964.

Notice signed by L. H. Rosenthal, Esq., of Jackson, Mississippi, and mailed on July 29, 1964, to the undersigned Albert Sidney Johnston, Jr., among other things, stated that:

"Counsel for the defendants will be as follows:

L. H. Rosenthal
221 N. President St.
Jackson, Mississippi

in association with one or more or all of the following attorneys:

Carl Rachlin
165 West 46th Street
New York, New York

John Pratt
475 Riverside Drive
New York, New York

Leo Pfeffer
156 Fifth Avenue
New York, New York."

After the entry of Order continuing Causes Nos. 8353, 8354, and 8355, to August 15, 1964, Causes Nos. 8356 and 8357, were removed to this Court by the above-named J. C. Higgs and Willie Reese, and on, to-wit: August 15, 1964, Benjamin Smith, Attorney of New Orleans, Louisiana, appeared as representing said Higgs and Reese, and he was permitted to actively participate in the proceedings before the Court.

Notwithstanding the Notice by Attorney L. H. Rosenthal mailed, as aforesaid, advised he would be Counsel for the defendants Miller, Goldstein, and Cleverdon, he took no part in the proceedings in behalf of his "clients" other than to rise to make one objection on the ground that the witness then on the stand was a "white" man, or words of similar import. The Court was requested to let the record so show.

In their unsworn petition for admission to the Bar of this Court "Pro Hac Vice" and for waiver of local counsel rule filed herein on, to-wit: July 20, 1964, New Orleans' attorneys Nils R. Douglas, Robert F. Collins, and Lolis E. Elie, said:

1. They had been retained by petitioner to "represent him in said proceeding and are the counsel of his choice", quoting from the second paragraph of said petition.

2. Because of the Civil Rights nature of this action they "have been unable to obtain a member of the bar of this Court to associate with us in the defense of this action", and "Our strenuous efforts to obtain such counsel are set forth in

the annexed affidavit of Lawrence P. Weisman, Esq."

3. "Accordingly, on the authority of Lefton v. City of Hattiesburg, 5th Cir. Doc. No. 21441 (5th Cir. June 5, 1964), petitioners respectfully pray that they be admitted to the bar of this Court pro hac vice as counsel for the defendants herein, and that this court accept for filing the annexed Notice of Appearance by the undersigned Attorneys and/or that this court grant such other and further relief as may appear just and proper."

NOTE: Identical petitions are filed in Causes No. 8353, 8354, and 8355.

POSITION OF THE MISSISSIPPI STATE BAR AS AMICUS CURIAE

Amicus Curiae was admitted to appear before the Court for the purpose of showing:

1. Through the Mississippi State Bar there are local counsel ready and willing to serve as defense counsel in cases of a civil rights nature, in this (United States District Court) and other courts of the state and federal system;

2. Other facts and circumstances having a bearing on the above-captioned matter which might otherwise escape the consideration of the Court; and to await and serve the Court's convenience as it may elect to avail itself of the service of your applicant.

I.

Appearing in the Congressional Record of Friday, August 7, 1964, on pages A4177-A4178, is statement by Congressman Colmer concerning the action of the Mississippi State Bar at its July 15, 1964, Meeting, in Jackson, Mississippi, in adopting a resolution committing the members of the State Bar to representation of all persons charged with offenses under so-called Civil Rights statutes, etc., regardless of race, color, or creed, and the said resolution is copied pro hac verba. Copy of said Resolution attached hereto, identified herewith, and made part hereof, as Ex. "A".

In the newspapers of July 29, 1964, appeared an article by the Associated Press, date-lined Washington, quoting Congressman James B. Utt of California, to the effect that the "international communist conspiracy has for many years boasted that the racial

question would result in the domination of this Country by the communist." Congressman Utt is also reported as saying that the "Mississippi civil rights workers are doing the sinister work of forces alien to America."

A removal of a state criminal action to a Federal court is a civil proceeding. The procedure to be followed is prescribed by statutes, and not by Rules of Criminal Procedure, nor by the Federal Rules of Civil Procedure. There is no requirement for the representation by counsel in civil causes. Again, petitioners Miller, Goldstein, Cleverdon, Higgs, and Reese, are charged with violation of a misdemeanor statute, not a felony, or serious offense. There is no occasion for representation by counsel, and no excuse for the application by non-resident Attorneys to be admitted to practice in these cases before this Court. Be that as it may, however, the fact remains that the Mississippi State Bar has made it clear to all the world, and most assuredly to the removal petitioners that they need not fear to be without counsel, for a fee, to be certain, if they are able to employ and retain counsel, and without fee, by appointment of the Judges of the courts of Mississippi, state and federal, when the occasion demands.

In the Resolution adopted by the Mississippi State Bar on July 15, 1964, and more particularly Article 3, on page 3 of the attached copy, The Board of Bar Commissioners requested the President to appoint a Special Committee to act as liaison committee from the members of the State Bar to be available for consultation with the Courts, State and Federal, of the State of Mississippi, and for or with all persons who might have any grievances as to, or lack of, representation of counsel, such committee to be a large and representative one, with sections thereof because of geographical proximity to Courts, State and Federal, and persons within the area being preferably appointed for each division of each of the Northern and Southern Districts of Mississippi.

These Committees are now organized and functioning throughout the State of Mississippi. Litigants here or in the state courts, for that matter, may not be heard to say they are unable to obtain

local counsel in any type criminal case, state or federal, including cases involving civil rights.

On the question of whether or not defendants in criminal cases involving misdemeanors are entitled to be represented by counsel, we refer the Court to the Opinion of Mr. Justice Douglas in Bute v. People of State of Illinois, 333 U. S. 640, 68 S. Ct. 763, from which we quote page 784, as follows:

"Betts v. Brady, supra, holds that we must determine case by case, rather than by the Sixth Amendment, whether an accused is entitled to counsel. A man who suffers up to 20 years in prison as a penalty is undergoing one of the most serious of all punishments. It might not be nonsense to draw the Betts v. Brady line somewhere between that case and the case of one charged with violation of a parking ordinance, and to say the accused is entitled to counsel in the former but not in the latter. But to draw the line between this case and cases where the maximum penalty is death is to make a distinction which makes no sense in terms of the absence or presence of need for counsel. Yet it is the need for counsel that establishes the real standard for determining whether the lack of counsel rendered the trial unfair. And the need for counsel, even by Betts v. Brady standards, is not determined by the complexities of the individual case or the ability of the particular person who stands as an accused before the court. That need is measured by the nature of the charge and the ability of the average man to face it alone, unaided by an expert in the law. As Power v. Alabama, supra, indicates, the need for counsel in capital cases is great even though the defendant is an intelligent and educated layman. The need is equally as great when one stands accused of the serious charge confronting Bute."

On the question of the activities of the COFO and other related groups, "touring" the state of Mississippi, with the "Mississippi Summer Project," as it is called, and the call for lawyers to defend their workers when charged with criminal offenses in Mississippi, it is quite evident that these appeals were for lawyers to agree to defend persons for future wrongs and violations of the

law contemplated when such agreements to defend were made. This would appear so violative of elemental ethical considerations, that there is no requirement for citation of authority. We would, however, like to call your Honor's attention to 5 Am. Jr., 292, Section 56, from which we quote a part:

> "Contracts for legal services, to obstruct or prevent the administration of justice are invalid. It is against public policy and illegal for an attorney to agree to protect a client in the commission of crime, to agree to defend his client or clients against prosecutions for future wrongs and violations of law contemplated when the contract was executed. It is also a well-established principle that contracts between attorney and client which have for their subject-matter any interference with the due enforcement of laws are against public policy and therefore void, as is a contract to secure the suspension of a criminal statute."

In the present posture of these cases, amicus curiae states to the Court there is no occasion or necessity for counsel, and certainly no showing of requirement or occasion for waiver of local rule for the admission of out-of-state counsel in these, or any other particular cases, removed and now pending in this Court.

II.

COFO has mimeographed and distributed its "Legal Guide" for its workers. A copy is attached hereto, identified herewith as Ex. B.

In a recent press release it was stated to be the purpose of COFO and affiliated groups to sabotage the functioning of the Federal judicial system in Mississippi; to monopolize the time of the Courts and Federal Judges, and to keep them so busy it would be necessary to bring in other Federal Judges from other states.

In a Memorandum under date of June 25, 1964, Mr. Erle Johnston, Jr., of the Mississippi State Sovereignty Commission, New Capitol Building, Jackson, Mississippi, reported that the National Lawyers Guild had opened an office at 507½ North Farish Street, Jackson, Mississippi, for the Guild's Committee for Legal Assistance in the South. He stated the National Lawyers Guild is cited as a communist front on page 121 of the Guide to Subversive Organizations and Publications published December 1, 1961,

by the Committee on Unamerican Activities, U. S. House of Representatives, Washington, D. C., and he quoted from that publication. He also referred to Benjamin Smith, the same Benjamin Smith who appeared in Court to represent Higgs and Reese, in Causes Nos. 8356 and 8357, as an officer of a communist front organization. Copy of the memorandum from Mr. Erle Johnston, Jr., is attached hereto as Exhibit "C".

By letter dated June 20, 1964, Mr. George W. Crockett, Jr., Co-Chairman of the Committee for Legal Assistance in the South, 3220 Cadillac Tower, Detroit, Michigan, for the National Lawyers Guild, wrote, signed and mailed a form letter to "Dear Fellow Attorney," advising, in part:

> "Nevertheless, we are anxious to arrange such association for each out-of-state volunteer attorney who comes to Mississippi this summer as a part of our program. Of course, the clients, whom they will represent, will be people who are unable to pay for such legal assistance."

Copy of the within above-mentioned letter, with form questionnaire attached, is attached hereto, identified herewith as Exhibit "D" and made part hereof.

On, to-wit: July 2, 1964, George W. Crockett, Jr., Co-Chairman, of the Committee for Legal Assistance in the South, 3220 Cadillac Tower, Detroit, Michigan, wrote a letter to Mr. W. L. Sims, Lowndes County Bar Association, 519½ Second Avenue, North Columbus, Mississippi, concerning the action of Judge Hicks of the City Court of Columbus, Mississippi, "in barring an Illinois and a New York attorney from representing six Negro defendants in his Court on June 29, 1964." Copy of said letter is also attached hereto, identified herewith as Exhibit "E" and made part hereof.

It will be noted that the letterhead of both the June 20, and July 2, 1964, letters, lists Benjamin Smith, 305 Baronne St., New Orleans, La., as one of the two Co-Chairmen of the National Lawyers Guild's Committee for Legal Assistance in the South.

In the report by the Committee on Un-American Activities of the House of Representatives, Eighty-Sixth Congress, First Session, of February 16, 1959, published by the United States Government

Printing Office, Washington, D. C., on pages 16 and 17, appears an article concerning, and having to do with, the National Lawyers Guild, exact copies of which are attached hereto, identified herewith as Exhibits "F" and "G", and made part hereof, the same as if copied in extenso herein, word for word, and figure for figure.

Section 8683, Mississippi Code of 1942, Recompiled, renders it unlawful to encourage litigation, and to employ a person to search for and procure clients to be brought to such attorney, and Section 8684, Code of 1942, Rec., fixes the punishment for violation of said Section 8683, and provides that:

> "Any attorney at law who shall violate the provisions of the proceeding section shall be guilty of a misdemeanor and shall be removed and disbarred from acting as an attorney at law, and any person who shall, before or after suit brought, receive or agree to receive from any attorney at law, compensation for services in seeking out or placing in the hands of an attorney a demand of any kind for suit or a compromise, shall be guilty of a misdemeanor."

Champerty and maintenance, and solicitation and stirring up of litigation is prohibited by Section 2049-01, Mississippi Code of 1964. See also Section 2049.03, Code of 1942.

Section 2049.04, Code of 1942, Rec., requires every attorney representing such party or parties mentioned in the foregoing statutes, on motion made by any of the parties to such proceeding, or by the court in which such proceeding is pending to file as a condition precedent to the further prosecution of such proceeding the affidavit set out in the statute.

In the afore-mentioned posture of these attempted removal proceedings, it is manifest that the Court is made a victim of fraud perpetrated and practiced upon it, since the proceedings are shown to have been conceived in iniquity. The removal petitioners planned, programmed and staged the entire "Mississippi Summer Project" for the avowed purpose of being arrested and charged with violation of the criminal laws of the State of Mississippi. They referred to their violation of the criminal laws of the state as civil disobedience.

III.

Amicus Curiae concludes with the prayer that the Court will indicate in what other fields or endeavors or in what manner, it may be of further service to the Court in this first-impression matter.

The foregoing is respectfully submitted for whatever assistance and help it may be to this Honorable Court.

Respectfully submitted,

MISSISSIPPI STATE BAR
BY

EDMUND A. WILSON

and

BY

ALBERT SIDNEY JOHNSTON, JR.

Co-Chairmen of Special
Liaison Committee For
the Southern District
of Mississippi.

CERTIFICATE OF SERVICE

I, Albert Sidney Johnston, Jr., Co-Chairman of Special Liaison Committee for the Southern District of Mississippi, do hereby certify that I have this day mailed, postage prepaid, true copies of the foregoing Statement on Behalf of the Mississippi State Bar, amicus curiae, to L. H. Rosenthal, Esq., and Benjamin Smith, Esq., properly addressed to their respective offices in Jackson, Mississippi, and New Orleans, Louisiana.

Dated on this the 28th day of August, A.D., 1964.

Albert Sidney Johnston, Jr.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

N O T I C E

It will be appreciated if counsel will notify the Court promptly of any settlements of any cases set or if any cases can not be tried as set. All motions in cases on this calendar will be presented to the Court on our regular Friday motion days, and not later than the last Friday preceeding the convening of this session. Your usual cooperation with these requests will be expected and appreciated.

William Harold Cox
United States District Judge

August, 1964 Session

NON-JURY

MONDAY, AUGUST 3, 1964

HATTIESBURG DIVISION - CIVIL ACTION NO. 1521

J. A. Morgan, et ux — William E. Logan, Hatten Bldg., Gulfport, Miss.

vs.

United States of America — U. S. Attorney, Jackson, Miss.

Filed: Remanded 9-25-63 Internal Revenue Laws

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No. 2886 - Civil

Atwell Transfer Co. — Rushing & Guice (Jacob D. Guice), P. O. Box 153, Biloxi, Miss.

vs.

Norman A. Johnson, Jr. — Joe T. Patterson, Atty. Genl., New Capitol Bldg., Jackson, Miss.; Wright, Overstreet, Kuykendall & Perry (Robert E. Perry), P. O. Box 961, Jackson, Miss.

Filed: 6-17-59 Motion for Injunction

THREE-JUDGE COURT

PRESIDING: Judges Ben F. Cameron, Claude F. Clayton and Sidney C. Mize

(FOR ANNOUNCEMENT ONLY)

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No. 2940 - Civil

United States of America — U. S. Attorney

vs.

Emile Kalil, Sr., et al — Forrest B. Jackson
P. O. Box 124
Jackson, Miss.
deQuincy V. Sutton
Dixie Towers
Meridian, Miss.
John E. Stone
4212 Brookdale
Jackson, Miss.

Filed: 1-18-60 Tax Lien

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No. 2964 - Civil

R. W. Ritchie — Creekmore & Beecham
(Lamar Beecham)
821 Plaza Bldg.
Jackson, Miss.
James W. Newman, III
111 Plaza Bldg.
Jackson, Miss.

vs.

United States of America — U. S. Attorney
(E. R. Holmes, Jr.)
Hubert Doster, Tax Division
Department of Justice
Washington, D. C.

Filed: 3-23-60 Cabaret excise tax refund

Remanded from Appellate Court - 3-14-64

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MONDAY, AUGUST 3, 1964 Continued

No. 3058 - Civil

Tennessee Gas Transmission Co., a corp. & Brown & Root, Inc., a corp.

Proctors for Libelant:
Dan H. Shell
P. O. Box 1172
Jackson, Miss.
Lord, Bissell & Brook
135 S. LaSalle St.
Chicago 3, Ill.

vs.

J. Ray McDermott & Co., Inc., a corp.

Forrest B. Jackson
P. O. Box 124
Jackson, Miss.
Robert B. Acomb, Jr.
1547 Nat'l Bank of Commerce Bldg., New Orleans, La.

(Suit in personam)

Filed: 11-23-60 Damages

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No. 3093 - Civil

Charles M. Wright, et al

Courtney & Echols
(H. A. Courtney)
709 Deposit Gty. Bank Bldg.
Jackson, Miss.
Anthony A. Tattis
P. O. Box 235, Jackson, Miss.

vs.

United States of America

U. S. Attorney

Filed: 3-8-61 Income Taxes

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No. 3172 - Civil

Stribling Bros. Machinery Co., a corp.

Paul M. Newton
2414 14th Street
Gulfport, Miss.

vs.

United States of America

U. S. Attorney

Filed: 8-24-61 Recovery of Income Taxes

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MONDAY, AUGUST 3, 1964 Continued

No. 3188 - Civil

Irby Charping, Petitioner

Brunini, Everett, Grantham & Quin (C. Delbert Hoseman)
P. O. Box 991
Vicksburg, Miss.

vs.

J. L. Enochs, District Director of Internal Revenue Respondent

U. S. Attorney

Filed: 9-21-61 Temporary Restraining Order, Permanent Injunction

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No. 3223 - Civil

C. H. Douglas, et al

Norman Gillis, Jr.
P. O. Box 264
McComb, Miss.
Joe T. Patterson, P. M. Stockett Jr., Dugas Shands, Edwart L. Cates & Charles Clark
New Capitol Bldg.
Jackson, Miss.
Louis Alford,
P. O. Box 8
McComb, Miss.
William A. Wiltshire
P. O. Box 1061
McComb, Miss.

vs.

The Congress of Racial Equality, et al

Carl Rachlin
280 Broadway, New York, N.Y.
Derrick A. Bell
10 Columbus Circle
New York 19, N. Y.
OF COUNSEL: Jack Greenberg
Wiley Branton & James M. Nabrit, III

Filed: 12-2-61 Civil Rights

Remanded 6-11-63

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No. 3372 - Civil

Isaac E. Watkins

Laurel G. Weir
P. O. Box 156
Philadelphia, Miss.

vs.

Anthony J. Celebrezze, Sec. of Hew

U. S. Attorney

Filed: 2-11-63 Complaint for Review

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TUESDAY, AUGUST 4, 1964

No. 3400 - Civil

Coastal Chemical Corp.

Satterfield, Shell, Williams
& Buford (John C. Satterfield)
P. O. Box 466
Yazoo City, Miss.

vs.

Filtrol Corporation

Wells, Thomas & Wells
(Earl T. Thomas & Erskine Wells)
P. O. Box 158
Jackson, Miss.

Filed: 4-18-63 Breach of Letter Contract

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No. 3406 - Civil

Fagan Chevrolet Co., Inc.

George H. Grubbs
Mendenhall, Miss.
Hugh McIntosh
Collins, Miss.
(William S. Boyd, Jr.)
Boyd, Rolifield, Harper &
Graves, Laurel, Miss.

vs.

Old Colony Insurance Co.

Satterfield, Shell, Williams
& Buford, (Dan H. Shell)
(Jerome B. Steen)
Box 1172, Jackson, Miss.

Filed: 4-26-53 Insurance Policy

REMOVED FROM CIRCUIT COURT OF SIMPSON COUNTY, MISS.

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No. 3436 - Civil

National Association for the Advancement of Colored People, et al

Jack H. Young & Carsie A. Hall
115-1/2 N. Farish St.
Jackson, Miss.
Robert L. Carter & Barbara A. Morris
20 W. 40th St. New York, N.Y.
R. Jess Brown
125-1/2 North Farish St.
Jackson, Miss.
Jack Greenberg, Leroy D. Clark & Derrick A. Bell
10 Columbus Circle
New York 19, N. Y.
Frank D. Reeves
508 Fifth St.,
Washington 1, D. C.
William R. Ming, Jr.
123 W. Madison St.
Chicago 2, Ill.

vs.

Angelo Primos, et al

Wachtel & Michaelson
575 Madison Ave.
New York 17, N. Y.
Watkins & Eager
(Thomas H. Watkins)
P. O. Box 650
Jackson, Miss.
E. W. Stennett
City Attorney, Jackson, Miss.
Travis, McKee & Franck
(M. Curtis McKee)
1000 Plaza Bldg.
Jackson, Miss.
Satterfield, Shell, Williams & Buford (Dan H. Shell)
P. O. Box 1172, Jackson, Miss.
Wells, Thomas & Wells
(Earl T. Thomas)
P. O. Box 158
Jackson, Miss.
Davies, Hardy & Schenck
(Kenneth W. Greenawalt)
2 Broadway, New York, N. Y.
Harry L. Rosenthal
242-1/2 E. Capitol St.
Jackson, Miss.
Wise, Smith & Carter
(M. Curtiss McKee)
P. O. Box 157, Jackson, Miss.

Filed: 6-12-63 Civil Rights

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TUESDAY, AUGUST 4, 1964 Continued

No. 3444 - Civil

United States of America — U. S. Attorney

vs.

Marshal Miller — W. W. Hewitt
Meadville, Miss.

Filed: 6-21-63 Judgment to Quiet Title to Land

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No. 3450 - Civil

United States of America — U. S. Attorney

vs.

One 1959 Ford Galaxie 2-door automobile, Motor No. C9GS147789 - Deposit Guaranty Bank & Trust Co., claimant — Bennett E. Smith
Dep. Guar. Bank & Trust Co.
Jackson, Miss.

Filed: 7-2-63 Libel of Information

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No. 3458 - Civil

W. Willard Wirtz, Sec of Labor, U. S. Dept. of Labor — Charles Donahue, Solicitor;
Beverley R. Worrell, Reg. Atty.
Oliver M. Cooper, Jr., Atty.
Ellis V. Cruse, Jr., Atty.
Office of the Solicitor, U. S. Dept. of Labor
1401 South 20th Street
Birmingham 5, Ala.

vs.

Irvin Wesley Havard — Barnett, Montgomery, McClintock & Cunningham
(E. H. Cunningham)
P. O. Box 1288
Jackson, Miss.

Filed: 7-18-63 Vio. Fair Labor Standards Act of 1938, as amended.

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No. 3472 - Civil

Jerry L. Harrison	Satterfield, Shell, Williams & Buford (Kenneth G. Perry) P. O. Box 1172 Jackson, Miss.

vs.

Pendleton Detectives, Inc.	Boyd, Holifield and Harper P. O. Box 726 Laurel, Miss.

Filed: 9-4-63 Declaratory Judgment

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No. 3483 - Civil

W. Willard Wirtz, Sec. of Labor, U. S. Dept. of Labor	Charles Donahue, Solicitor, 1401 S. 20th St. Birmingham 5, Ala. Room 341, 1365 Peachtree St., N.E., Atlanta, Ga. 30309

vs.

Canton Truck Service, Inc., a corp. & Lee Roy Pace	Nelson Cauthen Box 94 Canton, Miss.

Filed: 10-12-63 Fair Labor Standards Act of 1938

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No. 3498 - Civil

W. Willard Wirtz, Sec. of Labor, U. S. Dept. of Labor	John W. Douglas, Asst. Atty. General; Harland F. Leathers Dept. of Justice Robert E. Hauberg U. S. Attorney P. O. Box 2091, Jackson, Miss.

vs.

Southern Assn. of Transportation Employees	L. Arnold Pyle Box 427 Jackson, Miss.

Filed: 10-25-63 Title IV of Labor-Management Reporting & Disclosure Act of 1959 (29 U.S.C. 401 et seq.)

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WEDNESDAY, AUGUST 5, 1964

No. 3500 - Civil

United States of America	U. S. Attorney
vs.	
Cauble-Magee Asphalt Paving Co., Inc., a Miss. Corp., et al	Watkins, Pyle, Edwards & Ludlam (L. Arnold Pyle) 1347 Deposit Gty. Bank Bldg. Jackson, Miss.

Filed: 11-4-63 Promissory Note

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No. 3502 - Civil

The British-American Oil Producing Co., a corp.	Wells, Thomas & Wells (Earl T. Thomas) P. O. Box 158 Jackson, Miss.
vs.	
Vicksburg Terminal Co., Inc., a corp., defendant & third-party Plaintiff	Sullivan, Sullivan & Keyes (John C. Sullivan) P. O. Box 2366 Jackson, Mississippi
vs.	
Fireman's Fund Insurance Co., a California corp., third-party defendant	Roger C. Landrum 700 Petroleum Bldg. Jackson, Miss.

Filed: 11-9-63 Damages - negligence in contract

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No. 3506 - Civil

New Amsterdam Casualty Co.	Daniel, Coker & Horton (Curtis E. Coker) P. O. Box 1084 Jackson, Miss.
vs.	
M. A. Lloyd, et al	H. W. Broom & White, White and Clark 109 Electric Building Jackson, Miss. James A. Alexander, Jr. Box 977, Jackson, Miss. Thomas R. Crews Box 977, Jackson, Miss. Millard M. Bush, Jr. P.O. Box 25, Jackson, Miss.

Filed: 12-2-63 Declaratory Judgment - Insurance Policy

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No. 3510 - Civil

New Orleans, Furniture Export Company, Inc.	H. L. Hammett 1031 Whitney Bldg. New Orleans, La. Earl T. Thomas Box 158 Jackson, Miss.
vs.	
United States of America	Robert E. Hauberg Box 2091 Jackson, Miss.

Filed: 12-9-63 Income Tax Refund

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No. 3512 - Civil

Stirling S. McNair, et al	Scott Tennyson 690 1st Nat'l Bank Bldg. Jackson, Miss.
vs.	
Dresser Industries, Inc., (Lane-Wells Company Division) a corp.	Melvin Bishop P. O. Box 1084 Jackson, Miss.

Filed: 12-13-63 Negligence - Incorrect Material Furnished

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No. 3514 - Civil

United States of America	Robert F. Kennedy, Atty. Genl. Burke Marshal, Asst. Atty. Genl. Robert E. Hauberg, U. S. Atty. John Doar, Atty., Dept. of Justice, P. O. Box 2091 Jackson, Miss.
vs.	
A. B. Weeks, Circuit Clerk and Registrar of Copiah County, Miss., and State of Mississippi	Henley, Jones & Henley (W. S. Henley, Julius L. Lotterhos, Jr.) Hazlehurst, Miss. Armstrong & Hoffman Hazlehurst, Miss. Joe T. Patterson, Atty. Genl. State of Mississippi, Will S. Wells, Guy N. Rogers, William Allain & Peter Stockett, Asst. Attys. General, Jackson, Miss.

Filed: 12-17-63 Civil Rights - Preliminary and Permanent Injunction

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No. 3522 - Civil

Harbert Construction Corp.

Watkins & Eager
(W. E. Suddath, Jr.)
P. O. Box 650
Jackson, Miss.

vs.

Pearl River Valley Water Supply District, defendant & cross-claimant, et al

Watkins, Pyle, Edwards & Ludlam (Clifford C. Chittim)
L. Arnold Pyle
P. O. Box 427
Jackson, Miss.
Butler, Snow, O'Mara, Stevens & Cannada (Junior O'Mara)
P. O. Box 1250, Jackson, Miss.
Wells, Thomas & Wells
(Joe Jack Hurst)
P. O. Box 158, Jackson, Miss.

Filed: 2-17-64 Breach of Contract

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No. 3524 - Civil

Credit Industrial Corporation

Henley, Jones & Henley
(William S. Henley)
P. O. Box 326
Jackson, Miss.

vs.

Howard J. Wells

Pierce and Waller
(James L. Neeld, III)
P. O. Box 1261
Jackson, Miss.

Filed: 2-22-64 Contract Default

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No. 3526 - Civil

Commercial Credit Equipment Corp.

Brunini, Everett, Grantham & Quin (John A. Welsch, Jr.)
P. O. Box 119
Jackson, Miss.

vs.

W. R. McBride

Filed: 2-25-64 Breach of Contract

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No. 3528 - Civil

W. Willard Wirtz, Sec. of Labor, U. S. Dept. of Labor	Charles Donahue, Solicitor Beverley R. Worrell, Regional Attorney Norman H. Winston, Associate Regional Attorney Oliver M. Cooper, Jr. Attorney, U. S. Department of Labor, 1401 South 20th Street, Birmingham, Alabama 35205 Office of the Solicitor U. S. Department of Labor Room 341, 1365 Peachtree Street, N.E., Atlanta, Georgia 30309
vs.	
Jackson Broadcasting Company, a corporation	Wells, Thomas & Wells (Joe Jack Hurst) P. O. Box 158 Jackson, Miss.

Filed: 2-27-64 Fair Labor Standards Act of 1938

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MONDAY, AUGUST 10, 1964

No. 3530 - Civil

United States of America	Robert F. Kennedy, Atty. Genl. of the U.S.A. Burke Marshall, Asst. Atty. Genl. Robert E. Hauberg U. S. Atty., John Doar, Atty. Dept. of Justice Box 2091, Jackson, Miss.
vs.	
L. F. Campbell, Circuit Court Clerk, & Registrar, Madison County, Miss., et al	Joe T. Patterson (Peter M. Stockett) (Guy N. Rogers) (William A. Allain) Assistant Attorneys General New Capitol Bldg. Jackson, Miss. G. B. Herring Canton, Miss.

Filed: 3-5-64 Civil Rights

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No. 3538 - Civil

W. Willard Wirtz, Sec. of Labor U. S. Dept. of Labor	Charles Donahue, Beverley R. Worrell, Norman H. Winston, Hubert F. Owens Officer of the Solicitor 1401 S. 20th St. Birmingham, Ala.
vs.	
Southwest Publishers, Inc., et al	

Filed: 3-21-64 Vio. Fair Labor Standards Act of 1948

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No. 3546 - Civil

Bonnie G. Walker

vs.

Humble Oil and Refining Company, et al

William Wallace Allred
William D. Adams
John D. Kervin
Collins, Miss.

M. M. Roberts
Hattiesburg, Miss.
Vinson, Elkins, Weems & Searls, First Nat'l Bank Bldg.
Houston, Texas
George Woodliff
Scott Tennyson
First Nat'l Bank Bldg.
Jackson, Miss.

Filed: 3-27-64 Personal Injury - Jones Act

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No. 3550 - Civil

American National Ins., Co. of Galveston, Tex., et al

vs.

Leo E. Murray, et al

vs.

Jeptha S. Barbour, et al
Third-party defendants

Watkins & Eager
(Elizabeth W. Grayson & W. F. Goodman)
P. O. Box 650
Jackson, Miss.

Binder & Bush
(Millard M. Bush, Jr.)
218 President St.
Jackson, Miss.
Young & Young (Leon Young)
1540 Deposit Gty. Bank Bldg.
Jackson, Miss.
Cox, Dunn & Clark
(Vardaman S. Dunn)
P. O. Box 1046
Jackson, Miss.
Scott, Barbour & Scott
Suite 200, 1st Federal Savings & Loan Bldg., Jackson, Miss.
James Leon Young
1540 Deposit Gty. Bank Bldg.
Jackson, Miss.
Wells, Thomas & Wells
(Erskine W. Wells, W. Calvin Wells, Alex A. Alston, Jr.)
P. O. Box 158, Jackson, Miss.
Brunini, Everett, Grantham & Quin (E. L. Brunini)
P. O. Drawer 119
Jackson, Miss.

Filed: 4-8-64 Declaratory Judgment

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No. 3552 - Civil

Mississippi Steel & Iron Co., Inc. — Waller, Pritchard & Fox (Robert A. Pritchard) P. O. Box 1261 Jackson, Miss.

vs.

Farrell Construction Co., Inc. — Hon. Robert C. Cannada P. O. Box 1250 Jackson, Miss.

Filed: 4-13-64 Breach of Contract

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No. 3558 - Civil

Sumner Harry Cohen — Watkins, Pyle Edwards & Ludlam (Robert H. Weaver) P. O. Box 427, Jackson, Miss.

vs.

Billie G. May, et al — Daniel, Coker & Horton (Thomas A. Bell) P. O. Box 1084 Jackson, Miss.

Filed: 4-29-64 Personal Injury - Motor Vehicle

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No. 3561 - Civil

Cecil E. Jr., and Theo K. Inman — Creekmore & Beacham (L. L. Beacham) 821 Plaza Bldg. Jackson, Miss.

vs.

United States of America — U. S. Attorney

Filed: 5-6-64 Recovery Income Taxes

No. 3562 - Civil

Cecil E. Inman, Jr., et al — Creekmore & Beacham (L. L. Beacham) 821 Plaza Bldg. Jackson, Miss.

vs.

United States of America — U. S. Attorney

Filed: 5-6-64 Recovery of Income Tax

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JURY

TUESDAY, AUGUST 11, 1964

No. 3082 - Civil

Illinois Central Railroad Co.
an Illinois Corp.

Wise, Smith & Carter
(Sherwood W. Wise)
P. O. Box 157
Jackson, Miss.

vs.

Standard Oil Company of Kentucky
a Kentucky Corp., et al

Forrest B. Jackson
P. O. Box 124
Jackson, Miss.

Filed: 2-9-61 Property damage resulting from truck and train collision

DEFENDANTS REQUEST JURY TRIAL

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No. 3113 - Civil

Louis Braud

R. L. Netterville
Box 946
Natchez, Miss.
J. D. De Blieux
105 Court House Office Bldg.
Baton Rouge, Louisiana

vs.

Floyd Baker, et al

Satterfield, Shell, Williams
& Buford
340 1st Nat'l Bank Bldg.
Jackson, Miss.

Filed: 5-31-61 Personal Injury - Motor Vehicle

Reversed and Remanded 2-7-63

PLAINTIFF REQUESTS JURY TRIAL

No. 3114 - Civil

Mrs. Anna S. Braud

R. L. Netterville
Box 946, Natchez, Miss.
J. D. De Blieux
105 Court House Office Bldg.
Baton Rouge, Louisiana

vs.

Floyd Baker, et al

Satterfield, Shell, Williams
& Buford
340 1st Nat'l Bank Bldg.
Jackson, Miss.

Filed: 5-3-61 Personal Injury - Motor Vehicle
Remanded and Reversed 2-7-64

PLAINTIFF REQUESTS JURY TRIAL

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No. 3220 - Civil

Patrick Ryan

J. A. Travis, Jr.
Barney E. Eaton, III
Box 807, Jackson, Miss.
Albert Averbach
30 State St.
Senaca Falls, N. Y.

vs.

Yazoo Manufacturing Company

Butler, Snow, O'Mara, Stevens
& Cannada (Junior O'Mara)
P. O. Box 1250
Jackson, Miss.

Filed: 11-16-61 Personal Injury

PLAINTIFF REQUESTS JURY TRIAL

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No. 3344 - Civil

T. V. Blailock

Watkins & Eager
(W. F. Goodman, Jr.)
Box 650, Jackson, Miss.
Holmes & Cortright
108 E. Jefferson St.
Yazoo City, Miss.

vs.

Remington Arms Co., Inc.
et al

Daniel, Coker and Horton
(Joe H. Daniel)
P. O. Box 1084
Jackson, Miss.
Butler, Snow, O'Mara, Stevens
& Cannada (Junior O'Mara)
P. O. Box 1250, Jackson, Miss.
Overstreet, Kuykendall, Perry
& Phillips (N. W. Overstreet, Jr.
P. O. Box 961
Jackson, Miss.

Filed: 12-3-62 Personal Injury - Other

REMOVED FROM CHANCERY COURT HINDS COUNTY, MISS.

PLAINTIFF DEMANDS JURY TRIAL

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No. 3376 - Civil

Thomas J. Boone

Pyles & Tucker
507-1/2 E. Pearl St.
Jackson, Miss.

vs.

Armstrong Cork Co., et al

Daniel, Coker & Horton
(Melvin B. Bishop)
Box 1084, Jackson, Miss.

Filed: 2-21-63 Attachment Proceedings under Workmen's Compensation Claim

Removed from Chancery Court Smith County, Miss.

PLAINTIFF REQUESTS JURY TRIAL

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No. 3446 - Civil

Merrill, Lynch, Pierce, Fenner & Smith, Inc.

Wells, Thomas & Wells
(Erskine W. Wells)
Box 158
Jackson, Miss.

vs.

Kelton Lowery

Overstreet, Kuykendall, Perry & Phillips (N. W. Overstreet, Jr.)
P. O. Box 961
Jackson, Miss.
Watkins, Pyle, Edwards & Ludlam (E. R. Edwards)
Box 427, Jackson, Miss.

Filed: 6-25-63 Purchase of Sugar - Debt
DEFENDANT REQUESTS JURY TRIAL
ORDER 11-12-63 Consolidating with Civil Action # 3447

No. 3447 - Civil

Merrill, Lynch, Pierce, Fenner & Smith

Wells, Thomas & Wells
(Erskine W. Wells)
Box 158, Jackson, Miss.

vs.

Kelton Lowery

Overstreet, Kuykendall, Perry & Phillips
(N. W. Overstreet, Jr.)
P. O. Box 961,
Jackson, Miss.
Watkins, Pyle, Edwards & Ludlam (E. R. Edwards)
Box 427, Jackson, Miss.

Filed: 6-25-63 Purchase of Sugar - Debt

DEFENDANTS REQUEST JURY TRIAL

ORDER 11-12-63 Consolidating with Civil Action # 3446

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No. 3480 - Civil

Harold J. Foltmer

James Finch
P. O. Box 1169
Hattiesburg, Miss.
Charles E. Cabibi
918 Richards Bldg.
New Orleans, La.

vs.

R. C. Owens Lumber Co.
Defendant & Third-party plaintiff

Daniel, Coker & Horton
(Joe Daniel)
P. O. Box 1084, Jackson, Miss.

vs.

National Blow Pipe & Mfg. Co.
Third-party defendant

Satterfield, Shell, Williams & Buford(Carey E. Bufkin)
Box 1172, Jackson, Miss.

Filed: 9-26-63 Personal Injury-Other
PLAINTIFF REQUESTS JURY TRIAL

WEDNESDAY, AUGUST 12, 1964 Continued

No. 3482 - Civil

Lon C. Johnson, III, a minor by Lon C. Johnson, Jr., his father and next friend	Goza and Case 114 West Center St. Canton, Miss.
vs.	
The United States of America and Ted Owen Ware	U. S. Attorney

Filed: 9-26-63 Personal Injury - Motor Vehicle

PLAINTIFF REQUESTS JURY TRIAL

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No. 3490 - Civil

Joseph Carona, III, a minor et al	Crisler, Crisler & Bowling (Francis S. Bowling) Tombigbee at President St. Jackson, Miss. L. S. McClaren McComb, Miss.
vs.	
Pioneer Life Insurance Company et al	J. Gordon Roach McComb, Miss.

Filed: 10-15-63 Personal Injury - Motor Vehicle

ORDER GRANTING JURY TRIAL filed 2-28-64

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No. 3492 - Civil

Ivy P. McDaniel	Harry L. Case & B. D. Statham 110 North Cherry St. Magnolia, Miss.
vs.	
John K. Gay & Gay, Inc.	J. Gordon Roach P. O. Box 506 McComb, Miss.

Filed: 10-18-63 Personal Injury - Motor Vehicle

PLAINTIFF REQUESTS JURY TRIAL

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No. 3507 - Civil

International Service Ins. Co.

William A. Bacon
Box 15, Jackson, Miss.
Heard L. Floore,
Box 1040
Ft. Worth, Texas

vs.

Aaron B. Dupuy, Jr., et al

Sullivan, Sullivan &
Keyes (Earl Keyes)
620 Milner Bldg.
Jackson, Miss.

Filed: 12-4-63 Insurance Indebtedness

Consolidated with Civil Action No. 3508 by Order 2-26-64

DEFENDANT REQUEST JURY TRIAL

No. 3508 - Civil

Worth Insurance Company

William A. Bacon
Box 15, Jackson, Miss.
Heard L. Floore
Box 1040
Ft. Worth, Texas

vs.

Aaron B. Dupuy, Jr., et al

Sullivan, Sullivan &
Keyes (Earl Keyes)
Box 2366
Jackson, Miss.

Filed: 12-4-63 Insurance Indebtedness

Consolidated with Civil Action # 3507 by Order 2-26-64

DEFENDANT REQUESTS JURY TRIAL

- - - - - - - - - - - - - - - - -

MONDAY, AUGUST 17, 1964

No. 3516 - Civil

Golden Adkins

Ralph L. Peeples
Brookhaven, Miss.
Owen Roberts
Brookhaven, Miss.

vs.

Hartford Fire Insurance Co.

Watkins & Eager
(Thomas H. Watkins)
P. O. Box 650
Jackson, Miss.

Filed: 12-24-63 Collection of Insurance Policy

REMOVED FROM CIRCUIT COURT, LINCOLN COUNTY, MISS.

PLAINTIFF REQUESTS JURY TRIAL

- - - - - - - - - - - - - - - - -

No. 3536 - Civil

Mrs. Carolyn Bryant White, et al

Barnett, Montgomery,
McClintock & Cunningham
(George T. McClintock)
P. O. Box 1288
Jackson, Miss.

vs.

J. C. Jackson, Jr. & Forrest
J. Nichols, d/b/a, et al

Lipscomb & Barksdale
(Henry E. Barksdale)
P. O. Box 1115
Jackson, Miss.

Filed: 3-20-64 Personal Injury - Motor Vehicle

PLAINTIFF REQUESTS JURY TRIAL

No. 3537 - Civil

Mrs. Carolyn Bryant White, et al

Barnett, Montgomery,
McClintock & Cunningham
(George T. McClintock)
P.O. Box 1288
Jackson, Miss.

vs.

J. C. Jackson, Jr. & Forrest
J. Nichols, d/b/a, et al

Lipscomb & Barksdale
(Henry E. Barksdale)
P. O. Box 1115
Jackson, Miss.

Filed: 3-20-64 Personal Injury - Motor Vehicle

PLAINTIFF REQUESTS JURY TRIAL

No. 3540 - Civil

H. C. Bailey, et al — Harris B. Henley, P. O. Box 509, Hazlehurst, Miss.

vs.

United States of America — U. S. Attorney (Robert Hauberg)

Filed: 3-24-64 Recovery of Income Tax

PLAINTIFF REQUESTS JURY TRIAL

No. 3541 - Civil

H. C. Bailey, et al — Harris B. Henley, P. O. Box 509, Hazlehurst, Miss.

vs.

United States of America — U. S. Attorney (Robert Hauberg)

Filed: 3-24-64 Recovery of Income Taxes

PLAINTIFF REQUESTS JURY TRIAL

- - - - - - - - - - - - - - - -

No. 3542 - Civil

W. W. Bailey, et al — Harris B. Henley, P. O. Box 509, Hazlehurst, Miss.

vs.

United States of America — U. S. Attorney (Robert E. Hauberg)

Filed: 3-24-64 Recovery of Income Taxes

PLAINTIFF REQUESTS JURY TRIAL

No. 3543 - Civil

W. W. Bailey, et al — Harris B. Henley, P. O. Box 509, Hazlehurst, Miss.

vs.

United States of America — U. S. Attorney (Robert E. Hauberg)

Filed: 3-24-64 Recovery of Income Taxes

PLAINTIFF REQUESTS JURY TRIAL

- - - - - - - - - - - - - - - -

No. 3544 - Civil

George C. Bailey, et al — Harris B. Henley
P. O. Box 509
Hazlehurst, Miss.

vs.

United States of America — U. S. Attorney
(Robert E. Hauberg)

Filed: 3-24-64 Recovery of Income Taxes

PLAINTIFF REQUESTS JURY TRIAL

No. 3545 - Civil

George C. Bailey, et al — Harris B. Henley
P. O. Box 509
Hazlehurst, Miss.

vs.

United States of America — U. S. Attorney
(Robert S. Hauberg)

Filed: 3-24-64 Recovery of Income Taxes

PLAINTIFF REQUESTS JURY TRIAL

No. 3556 - Civil

Mrs. Alice Nevels — Julian Alexander
Milner Bldg.
Jackson, Miss.

vs.

Merck & Co., Inc., a corp. — Lawrence J. Franck
P. O. Box 995
Jackson, Miss.

Filed: 4-27-64 Personal Injury - Other

REMOVED FROM CHANCERY COURT, HINDS COUNTY, MISS.

PLAINTIFF DEMANDS JURY TRIAL

- - - - - - - - - - - - - - - - -

MONDAY, AUGUST 17, 1964 Continued

No. 3560 - Civil

Mrs. Dixie Lanell Herrington

King & Powell
(Roy D. Powell)
Box 381
Jackson, Miss.

vs.

Lloyd Livingston and the United
States of America

Filed: 5-2-64 Personal Injury - Motor Vehicle

PLAINTIFF DEMANDS JURY TRIAL

- - - - - - - - - - - - - - - -

[enclosed, Rachlin to Karpatkin, 1964, Sept 15]

COPY

Canton, Mississippi
September 2, 1964

Your application for transfer from Rogers Junior - Senior High School has been received, and until you are notified of the School Board's action relative to assignment of students to attendance centers, you will remain in the school in which you are presently enrolled. Present enrollment status is based on registration last spring and promotions within the Canton School System.

Signed:_____
D.M. Allen, Superintendent
Canton Public Schools

[illegible]

[illegible]

[illegible]

They had a heavily constructed note. The letter contain[illegible] [illegible] given to the students today at Carson High. [illegible] Further information we have that may be of use to you is as [illegible] Sincerely we shall keep you informed of any further develop[illegible]

Sincerely yours,

file

September 15, 1964

Marvin Karpatkin, Esq.
Karpatkin, Ohrenstein & Karpatkin
660 Madison Avenue
New York, N.Y.

Dear Marvin,

Enclosed is a letter from Mary Ann Shupenko dated September 3rd and the form handed to students applying to transfer to Canton High in Canton, Mississippi, to which the letter refers.

Sincerely,

Carl Rachlin
General Counsel

CR:hdl

Encs/

Council Of Federated Organizations

838 Lutz St
Canton, Miss

SEP 18 1964

September 16, 1964

Dear Mr. Rachlin,

Enclosed is the Petition turned into the School Board of Madison County last week. Attorney Steve Hopkins handled the case for us when he was down here. As I told you yesterday, he's now in New York and he can give you the complete legal rundown. Today, George is taking the parents ofthe children into Jackson for a formal appointment with Carsie Hall. Steve told me this wasa formality, asking Carsie to handle the case.

Please excuse the typing on the petition and on this letter. However, every typewriter in this office isa relic from the Medieval Ages. The one decent one finally gave out in the middle of the petition. (Perhaps you could mention this to Marv Rich and maybe CORE would send us a typewriter that really works... Also, if CORE would send us the shipment of materials I asked for, I could write letters to you on CORE stationary. I know this is not your department, but maybe a bug in Marv's ear???

I hope this letterfinds you in good health. Mrs. Devine, George and I send you our regards. Take care.

Yours In Freedom,

Mary Ann Shupenko

Mary Ann Shupenko

9/23 copies to Clora Coleman
Ben Brown
Dennis Rich

September 24, 1964

Miss Mary Ann Shupenko
c/o C.O.F.O.
838 Lutz Street
Canton, Mississippi

Dear Mary:

I spoke to Mel Margolies and he will continue with Steve Hopkins on your school case. I will keep on top of this and make certain that it is ready in reasonably short order.

Kindest regards,

Carl Rachlin
General Counsel

P.S. We have just received a copy of the petition with your letter of September 16th. Actually, this letter was dictated several days ago but my secretary has been out with the flu the past week and unhappily your letter was a casualty of the flu. I will keep in touch with you.

CR

CR:hdl

Copies of petition sent to:
Mel Margolies
Karen Karpathian

To be dated and sent registered.

mailed out 2/5/65

REGISTERED MAIL

Loryce E. Wharton, Clerk
United States District Court
Southern District of Mississippi
Jackson, Mississippi

HERRICK, SMITH, DONALD, FARLEY & KETCHUM

294 WASHINGTON STREET

BOSTON, MASSACHUSETTS 02108

AREA CODE 617 542-4950

EDWARD A. TAFT
PHILLIPS KETCHUM
EUGENE T. CONNOLLY
BARTLETT HARWOOD
HENRY R. GUILD
JOHN T. NOONAN
CHARLES C. CABOT
WARREN D. OLIVER
ALEX J. McFARLAND
HENRY L. MASON
CARL J. MAROLD
CHARLES F. HOVEY
DONALD P. DONALDSON
FULTON C. UNDERHAY
MALCOLM D. PERKINS
KEVIN HERN
JOHN M. WOOLSEY, JR.
AUGUSTUS W. SOULE, JR.
JOHN P. WEITZEL
ROBERT J. McDONOUGH
SAMUEL G. KING
JAMES W. NOONAN
HENRY R. GUILD, JR.

W. SIDNEY FELTON
HENRY V. ATHERTON
M. VIRGINIA MORRISSEY
NORMAN A. HUBLEY
SAMUEL B. POTTER
EDWARD M. CONDIT, JR.
CHARLES C. CABOT, JR.
JOHN BRAND FRENCH
ANN COOPER
ROBERT E. SULLIVAN
H. LAWRENCE TAFE, III
THOMAS S. CHITTENDEN
DIANE LUND
JOHN R. QUARLES, JR.
DAVID M. ROBY
JAMES R. NICHOLS

JANICE E. TARLIN, C. P. A.

CABLE ADDRESS
"HESDOF" BOSTON

FEB 3 REC'D

January 27, 1965

Carl Rachlin, Esq.
165 West 46th Street
New York, New York

Dear Carl:

I enclose the Notice of Deposition and Interrogatories for Dan Pearlman. Also, what should do for the deposition based on Dan's affidavits and prior testimony. As you will see, the certificate says Dan had with him an affidavit and poster, as he will have. So I think it's all right to do it this way and have him read it and sign it in your presence.

Please have three executed, send the original to the Court and one to me, c/o Marian Wright, 538 1/2 North Farish St., Jackson, and the third to me here in Boston. I'm not sure just when I'll be where. Many thanks for helping on this, Carl.

I have not heard from Alan yet about another attorney on the bond matter. However, another attorney tells me a lawyer (named Hastings, I think) is recruiting a group of lawyers to work for CORE here in Boston.

Best regards,

Ann Cooper

Ann Cooper

AC/jts
Encs.

p.s. Under Rule 30(f), the original should be placed in the envelope marked with the title of the case and sealed.

Mississ. Gen. Case file

EDWARD A. TAFT
PHILLIPS KETCHUM
EUGENE T. CONNOLLY
BARTLETT HARWOOD
HENRY R. GUILD
JOHN T. NOONAN
CHARLES C. CABOT
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294 WASHINGTON STREET
BOSTON, MASSACHUSETTS 02108
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JOHN R. QUARLES, JR.
DAVID M. ROBY
JAMES R. NICHOLS

JANICE E. TARLIN, C. P. A.

CABLE ADDRESS
"HESDOF" BOSTON

February 8, 1965

FEB 9 REC'D

Carl Rachlin, Esq.
165 West 46th Street
New York, N. Y. 10036

Dear Carl:

I received the copy of Dan Pearlman's deposition today. Thanks again for helping out on this.

The Assistant Attorney General in Mississippi, who was to handle this case is ill, and therefore the case has been continued until the next session, which will probably be in May or June.

Sincerely yours,

Ann

Ann Cooper

AC/jts
cc: Mr. Daniel Pearlman

[1965] Canton Jazz

PETITION

TO ROY E. COX, SUPERINTENDENT OF EDUCATION, AND THE SCHOOL BOARD OF MADISON COUNTY, MISSISSIPPI

We the undersigned parents and citizens of Madison County, because of our concern for the education and welfare of our children, do hereby petition and request that, within one week herof, a hearing be granted whereby the matters and requests stated below may be discussed and peacefully resolved.

1. On Tuesday, September 1, 1964, certain of us and of our children personally appeared at Canton High School and Canton Junior High School and requested that our said children be permitted to transfer to the said Canton Schools. At that time, those so appearing were instructed to return on Thursday, September 3, 1964, which, school officials said, was the proper date to apply for such transfers.

2. On September 3, 1964, certain of us and our children personally appeared at the said schools, and requested that the said children be permitted to transfer to the said schools. Our said children then completed the proper applications for such a transfer and our said children were then told to return to their former schools pending consideration by you of the applications for transfer.

3. By Tuesday, September 8, 1964, the date on which regular school sessions were to commence for the academic year 1964-1965, you had failed to advise the said applicants of your decision regarding the said application for transfer filed with you on September 3, 1964. Accordingly, certain of us and our children again personally appeared at the said schools requesting that our said children be admitted thereto as transfer students. At that time, a school official refused to admit our said children to the said schools as transfer students and our said children were told to return to their former schools.

4. All of your petitioners and our said children are Negroes. Our said children have always attended segregated schools in Canton wherein only Negro children are allowed to attend. The said Canton High School and Canton Junior High School are now, and have always been, restricted to use by children of the Caucasian or white race. Such a segregated school system is inherently unfair and discriminatory to our said children and results in our said children obtaining an education which is inferior to that obtained by the white children of Madison County thereby denyting to our children the equal protection of the law guaranteed to them by the Constitution of the United States.

5. In light of the foregoing facts, it is hereby requested that all of the public schools of Madison County be promptly and completely desegregated in accordance with the 1954 Supreme Court decision in Brown v. Board of Education forbidding such segregation in public schools and that all children in all grades be permitted to attend such schools as each such child may choose. Although ten years ahve passed since the said decision, public school education in Madison County continues on a segregated basis in violation of the constitutional rights of ourchildren as guaranteed by the Fourteenth Amendment to the United States Constitution. The Supreme Court placed the obligation upon local school officials to implement desegregation in public schools, which duty you have not met.

We respectfully request that an immediate reply to this petition be given and a date be set for a hearing to be held one week hereof, to discuss and resolve these requests.

Citizens and Parents of Madison County

dated: September 11, 1964
Canton, Mississippi

Canton School
Miss

name of School District
Canton Separate School
District

Phone book lists 1 white
elementary Jr high
1 high

Negro Duc Heal & Elem
Cameron
Rogers Jr High

1 private school Holy Child
Jesus Convent

2 others under white
Jarman Park & Elem
in Jarman Park
Luther Brown elem
Highway 16 - near Canton

probably a majority of Negro

Children offline
Canton public High (white)
part of school

Sept 1 Tue Negro applied
Sept 4 Friday date came back on

Sept 3 - 19 children
appeared

bed to go to Huyrequen
high (Rogers) until they bear

Sept 8 (Tues) - 13 children
appeared 1st day of school
at Center St & Regular High -
Drove up in cars - officers
waiting - tied them to fallen
logs & directed to unload
children left.

Sept 11 filed petition at
school - registered nigl -
order for complete desegr of
Madison schools

Steve Hopkins + Mel Magoles
2 Wall St

Sept 7 school Bd
B.M. Allen - Clinton

Sept 7 Education of Madison
County - Roy E. Cox

names of school Bd.

NANCY please file

[1965]

CORE, New York Regional Headquarters
48 W. 125th Street
New York, N.Y. EN 9-0100

FROM: New York Regional Headquarters

RE: Lack of Federal Action in Mississippi

Title 18, Section 241

Section 241
Conspiracy against rights of citizens. If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privelege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway or on the premise of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured -- They shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

Section 242
Deprivation of rights under color of Law. Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any state, territory or district to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being alien or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year or both.

Section 243
Exclusion of Jurors because of race or color. No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States or of any state because of race or color or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summonsing of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than $5,000

Section 244
Discrimination against persons wearing uniform of the Armed Forces. Whoever being a proprietor, manager, or employee of a theater or other public place of entertainment or amusement in the District of Columbia or in any territory or possession of the United States, cause any person wearing the uniform of any of the Armed Forces of the United States to be discriminated against because of that uniform shall be fined not more than $500. As amended May 24, 1949, c.139 35, 63 Stat. 90.

Section 3053
Powers of Marshals and Deputies (con't). United States marshals and their deputies may carry firearms and may make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony. June 25, 1948, c. 645, 62 Stat. 817.

Section 3052
Powers of Federal Bureau of Investigation. The Director, Assistant Directors, inspectors, and agents of the Federal Bureau of Investigation of the Department of Justice may carry firearms, serve warrants and subpoenas issued under the authority of the United States and make arrests without warrant for felonies cognizable under the laws of the United States, where the person making the arrest has reasonable grounds to believe that the person arrested is guilty of such felony and there is a likelihood of his escaping before a warrant can be obtained for his arrest. June 25, 1948, c. 645, 62 Stat. 817.

[1965]

A LIST OF MISSISSIPPI CHURCHES DESTROYED OR DAMAGED

June 15 -- September 20

June 15 -- Hattiesburg, Mississippi
Rosary Roman Catholic Church; Pastor: Father John Kersten.
Auditorium gutted by fire hours after a meeting, during which, in the words of the pastor, "These Negroes were discussing means of averting racial violence."

June 16 -- Philadelphia, Mississippi
Mt. Zion Baptist Church. Leveled by bomb after local Whites beat three Negroes. (This was the church that Chaney, Goodman and Schwerner were sent to inspect.)

June 21 -- Brandon, Rankin County, Mississippi
Sweet Rest Church of Christ Holiness; Pastor: Rev. L.C. Robinson.
Molotov cocktail. Fire started; damage not extensive.
(This church was subsequently destroyed in early August.)

June 25 -- Ruleville, Mississippi
Williams Chapel. Molotov cocktail. Chapel stairs and front charred. Eight gasoline-filled plastic bags spread around the church failed to ignite.

June 26 -- Clinton, Mississippi
Church of the Holy Ghost; Pastor: Rev. James Washington.
Kerosene spilled on the floor, and lit. Half of the floor and ceiling were charred; other damage minor. The incident occurred after a local white minister, Rev. Yonkers, had spoken to the Bible class. The Church was not being used as a civil rights center.

July 6 -- Jackson, Mississippi
McCraven - Hill Missionary Baptist Church; Pastor: Rev. Frank Jones. Kerosene fire; slightly damaged. The church had no ties with the civil rights movement.

July 11 -- Browning, Mississippi (near Greenwood)
Pleasant Plan Missionary Baptist Church burned to the ground. Shortly before it was burned, whites sought to buy the church. Their offer had been refused.

July 13 -- Kingston, Mississippi (near Natchez)
Jerusalem Baptist Church; Pastor: Rev. Shead Baldwin.
The church was leveled by fire. The church had not been used for civil rights meetings.

July 13 -- One mile east of Kingston, Mississippi
Bethel Methodist Church. Totally destroyed by fire. The Church had no connection with the civil rights movement.

July 17 -- McComb, Mississippi
Mount Zion Hall Baptist Church; Pastor: Rev. Daniel Walker.
Moderate damage.

July 19 -- Madison County, Mississippi (On Highway 51, between Ridgeland and Madison)
Christian Union Baptist Church; Pastor: Rev. R. L. Luckett.
Burned to ground. The church had not been used by the civil rights movement.

July 22 -- Pike County (six miles east of Magnolia, Mississippi, near the southern entrance to Percy Quinn State Park, four miles from Mt. Zion, which was burned June 16, 1964)
Mt. Vernon Missionary Baptist Church; Pastor: Rev. Henry McKnight.
Completely destroyed by fire. The church had no ties with the civil rights movement.

July 24 -- McComb, Mississippi
Rose Hill Church. Moderately extensive damage, caused by fire.

July 30 -- Meridian, Mississippi
Mount Moriah Bapist Church leveled by fire.

July 31 -- Rankin County, Mississippi (Located on Highway 80, approximately three miles from Brandon, Mississippi)
Pleasant Grove Missionary Baptist Church: Deacon: Mr. Benjamin Jones. The church was burned to the ground.

August 5 -- Finwick , Mississippi (near Natchez, Mississippi)
Mount Pilgrim Baptist Church, on Duck Pond Road, burned.
The building could not be saved.

August 11 -- Gluckstadt, Mississippi (near Clinton)
Mount Pleasant Church; Pastor: Rev. N. O. Taylor.
The church was severly damaged by fire. It had been used as a Freedom School.

August 12 -- Brandon, Mississippi
St. Matthew's Baptist Church; Pastor: Rev. Jesse Sutton.
The church was heavily damaged by fire.

August 22 -- Itta Bena, Mississippi
Perry's Chapel. The chapel burned to the ground. The Itta Bena Fire Department deemed the building out of the department's jurisdiction.

September 9 -- Aberdeen, Mississippi (On Route 45)
Mount Moriah Baptist Church. Parts of the floor and pews destroyed by dynamite. No fire.

July 17 -- McComb, Mississippi
Mount Zion Hall Baptist Church; Pastor: Rev. Daniel Walker.
Moderate damage.

July 19 -- Madison County, Mississippi (On Highway 51, between Ridgeland and Madison)
Christian Union Baptist Church; Pastor: Rev. R. L. Luckett.
Burned to ground. The church had not been used by the civil rights movement.

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The church was heavily damaged by fire.

August 22 -- Itta Bena, Mississippi
Perry's Chapel. The chapel burned to the ground. The Itta Bena Fire Department deemed the building out of the department's jurisdiction.

September 9 -- Aberdeen, Mississippi (On Route 45)
Mount Moriah Baptist Church. Parts of the floor and pews destroyed by dynamite. No fire.

September 12 -- Aberdeen, Mississippi
Daniel Baptist Church (on Route 25.) The front porch was burned off, along with a portion of the front lawn. Except for a few speakers, the church had no connection with the civil rights movement.
Cause of fire is officially listed as "unknown."

September 16 -- Valley View, Mississippi (Madison County, eight miles from Canton, Mississippi.)
Saint John the Baptist Church. The church burned to the ground between 11:00 and Midnight. This church was the first ever used in rural Madison County for voter registration, and it was the location of the CORE Freedom School this past summer. For the past year, the leaders of the church have been trying to get fire insurance from local firms and had been refused. The F.B.I. has been informed of all details. The fire department was informed of the fire at about 11:30 P.M., but they never arrived, even though there was danger of a butane tank exploding.

September 17 -- Madison County, Mississippi (seven miles south of Canton, on Route 43)

Cedar Grove Baptist Church. The church has been completely levelled by fire: only the stone front steps remain standing. It was to be the location of a meeting of the Madison county Farmers League, planned for the twenty-third of September. The church had been used as a CORE Freedom School throughout the summer.
The fire was started at approximately 3:00 A.M.

September 18 -- Pine Ridge, Mississippi (near Philadelphia)
Pine Ridge Sanctified Church. Less than one-third of the church remained standing after a series of dynamite explosions. This church formerly served a Negro community three miles inside of Kemper County. The FBI has been notified. The church had no connection with the civil rights movement.

September 18 -- Philadelphia, Mississippi
Choctaw Indian Church. A Mennonite church which served the Coy community of Indians, and which had a white pastor, was completely destroyed. The building, located thirteen miles from Philadelphia on Route 21, in Neshoba County, was valued at $25,000.

September 20 -- McComb, Mississippi
Society Hill Baptist Church. At approximately 11:20 P.M. A bomb detonated in the center of the church, almost totally destroying the building. The roof caved in, and only two walls remain, listing severely. The church, whose Pastor is

Reverend Ned Taylor, is located on Highway 5, three miles south of McComb, in Baertown. The church has been active in the civil rights movement . In 1961, it was used for voter registration activities; recently the congregation decided to use it again for such purposes. Most of the congregation belong to the Freedom Democratic Party, and most of the students at the McComb Freedom School belong to this church.

Oct. 4 -- COFO Office bombed 1 hurt, Vicksburg Miss church bombed.

Aug 5 -- McComb Mississippi
Mt. Canaan Missionary Baptist church: Pastor: Rev. C. Andrew
Moderate damage by fire.

Aug 19: -- Collinsville, Mississippi
Pleasant Ridge Baptist Church: Pastor Reverend Croft
Totally destroyed by fire.

September 23 -- Newton County (near Meridian, Miss.)
Battlefield Church
Moderate damage

Mississippi Situation & Demands

Situation:

1. Arrenst being made after Mississippi Grand Jury indicts, not before as is the usual procedure for F.B.I.

2. 100 F.B.I. agents in Mississippi. 11 arrests fo far -- less than 1/10 arrest per agent.

3. The state is also pressing for indictment of Negroes and at least one civil rights worker, on trumped up charges.

4. Gov. Johnson continues to blame civil rights workers for the bombings that occur.

5. There is not enough federal power excercised in Mississippi to prevent any incidents.

6. The state has refused to cooperate with the federal Government in any area where protection of minority citizens is necessary.

Demands:

1. That the Federal Government release reports on what their investigations have revealed. (Similar to what was done in the Warren Report)

2. That 2,000 Federal Marshals be sent to Mississippi to patrol the highways and protect the churches, homes and Synagogues.

3. That the Federal Government demand and secure the release of all persons jailed in violation of the Constitution and United States Code of Criminal Procedure (Title 18).

4. Implement the 8 point program outlined by the 18 Congressmen to the president, with one addition: That the full powers of the F.B.I. be used to bring those guilty of the many crimes perpertrated against those persons seeking to excersise their rights, to justice, including on the spot arrests.

MISSOURI – EQUAL OPPORTUNITIES MEMORANDA AND PAPERS

Box
Folder

Original Order

A PRELIMINARY MEMORANDUM ON HOUSING DISCRIMINATION AT MISSOURI UNIVERSITY

University Dormitories

A state may not discriminate on a racial basis in any facility that it operates. Integration means integration in all aspects and not merely attending classes. In McLaurnin v. Oklahoma State Regents, 339 U.S. 137 (1950), the state university permitted the Negro to attend classes, but he was made to sit in a special seat and to eat at a special table in the cafeteria. This was held to be unconstitutional, since he was entitled to be treated as an individual without regard to his race. A student attending the University of Missouri is entitled to be treated as an individual in all phases of the University's operation and cannot be assigned to live solely with members of his own race. By the same token, it is immaterial that he can be assigned to room with a white student if both approve. In effect, the University may be operating three tiers of housing: (1) whites only where the white students prefer not to live with Negroes; (2) Negro only where the Negro students prefer not to live with whites; (3) integrates where students are willing to live together. This is unconstitutional, since a state may not maintain any facility on a racially segregated basis. It has been held, for example, that a state may not maintain both integrated and segregated schools, giving students the option to attend. Boson v. Rippey, 285 F.2d 43 (5th Cir. 1959), cert. denied, 361 U.S. 924 (1959).

Directly in point are the cases involving segregation in public housing. Every effort by states to separate races in housing has been held to be unconstitutional despite claims by the states that such

separation is necessary to preserve harmony. Thus, the state cannot provide that Negroes cannot own property in certain neighborhoods. Buchanan v. Warley, 245 U.S. 60 (1917); Monk v. City of Birmingham, 185 F.2d 859 (5th Cir. 1950). Following the decision in Brown v. Board of Education of Topeka, 347 U.S. 483 (1954), the rationale was extended to "separate but equal facilities" as well. The state could not furnish housing, but keep whites and Negroes separate on the ground that "it was in the best interests of society." The leading case is Detroit Housing Commission v. Lewis, 226 F.2d 180 (6th Cir. 1955). The Housing Commission maintained separate lists of white and Negro applicants. Certain projects were designated as integrated. The application blanks contained a question as to race and upon the basis of race the lists were maintained. It was held that the doctrine of separate but equal had no place in public housing, as in any other public facility. The defendants were ordered to cease denying admission to any housing unit on the basis of race and to cease maintaining separate lists. The only issue on appeal was the method of transition. See also to the same effect Davis v. St. Louis Housing Authority, Civil Action No. 8637(1), E.D. Mo. 1955 (unreported).

By the same token, the University of Missouri may not maintain racial segreation in dormitory housing, may not query students as to race may not maintain separate lists because of race, and may not assign students to dormitories on the basis of race.

Housing subject to University Control

Just as a state may not require segregation, it may not assist segregation and may not permit persons subject toiits control, that is, persons using state facilities or under contract with the state to furnish services or facilities that the state otherwise would furnish to

segregate or discriminate on racial grounds. Fraternities, sororities and cooperatives are using state property and cannot operate on campus without the approval of the state. Householders must enter into contracts with the state before students are permitted to stay in their homes. The state closely supervises and regulates this private, off-campus housing, and without the exercise of its police power, can refuse its facilities and approval to those householders who discriminate on racial grounds. Under these circumstances, the discrimination involves state action, and the state cannot, consistent with the Fourteenth Amendment, be a party to such discrimination.

The leading case on this point is Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961). A public parking authority owned a building in which it leased space to a private restaurant operator. It did not require him to serve all persons irrespective of race. It was held that the state was a joint participant in the exclusion of a Negro from the restaurant on racial grounds and that such exclusion was in violation of the Fourteenth Amendment. The Court observed as follows:

> "As the Chancellor pointed out, in its lease with Eagle the Authority could have affirmatively required Eagle to discharge the responsibilities under the Fourteenth Amendment imposed upon private enterprise as a consequence of state participation. But no State may effectively abdicate its responsibilities by either ignoring them or by failing to discharge them whatever the motive may be. It is of no consequence to an individual denied the equal protection of the laws that it was done in good faith." 365 U.S. at 775.

The same principle has been applied to lessees in a county courthouse, Derrington v. Plummer, 240 F.2d 922 (5th Cir. 1956), cert.denied, 353 U.S. 924 (1957); an air terminal, Coke v. City of Atlanta,

184 F. Supp. 579 (N.D.Ga. 1960); a golf course, City of Greensboro v. Simkins, 246 F.2d 425 (4th Cir. 1957); and a city owned building used as a theater, Jones v. Marva Theaters, 180 F.Supp. 49 (D.Md. 1960). The point is that the state may not permit racial discrimination when, without exercise of its police power, it could have prevented it. It may not permit its lessees and contractors to discriminate. Thus, here, it cannot permit groups using university land or facilities to discriminate. It cannot make available its facilities and approval to private householders and at the same time permit them to discriminate on racial grounds. A state may not effectively abandon its responsibilities so long as it retains the power to control.

Of course, it is not contended that the state may not give up its power to control. If it permitted students to make whatever private housing arrangements they wanted and did not enter into contracts with householders nor approve homes, then the private persons would be free to discriminate. A state can fully abandon a facility and retain no control even if the purpose is to permit the private person - who now has full control - to discriminate. Timkins v. City of Greensboro 276 F.2d 890 (4th Cir. 1960). But so long as it retains any ownership or control, it cannot abdicate its reponsibilities, even though it agrees by contract to exercise no control over the contractor. Coke v. City of Atlanta, supra. If it denied fraternities the use of campus facilities and did not recognize them or furnish any assistance, such groups could discriminate. But whenever the state is involved, it cannot permit racial discrimination.

Finally, it is immaterial that householders would not agree to accept students on a non-discriminatory basis. A state cannot justify

a denial of equal protection on grounds of "necessity." It must either eliminate the discrimination or find other means to carry out its programs. Thus, in Goins v. County School Board of Grayson County, 186 F.Supp. 753 (W.D.Va. 1960), where a county school board had a contract with a city which maintained a high school whereby county students attended that high school, Negro students were also entitled to attend that school even if the city would terminate the contract because of the attendance of Negroes. The county could not make a contract by which only white students could receive a benefit. If the contractor was unwilling to take Negro students as well, then the school board as the state would have to abandon the contract. This reasoning is equally applicable here.

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CLARENCE M. BARKSDALE
ST. LOUIS COUNTY

For Release 6:00 P.M. Wednesday
January 7, 1965
For morning papers of January 8

COMMISSION CALLS ON BUSINESSES, LABOR UNIONS, "TO RE-EXAMINE POLICIES"

Forrest Carson, Chairman of the Missouri Commission on Human Rights, today called upon 4,000 Missouri businesses and labor unions covered by the state fair employment practices law to "re-examine their policies to be sure that they are extending equal opportunities to all qualified persons without regard to race, creed, color, religion, national origin or ancestry."

He made this request in a letter to 1,600 unions and 2,400 employers which accompanied a mailing of the F.E.P. law and a poster outlining it. In addition to the law, the Commission sent each employer a "Merit Employment Checklist" and each union a "Fair Union Practices Checklist" which they could use as a guideline in conducting the re-examination of their policies.

Carson stressed that the Checklists are for the guidance of the employers and the labor unions themselves and was not to be returned to the Commission. The text of Carson's statement when he released the letters follows:

"Although we have had encouraging reports of increased merit employment in Missouri, there is significant evi-

dence that an unreasonably large number of labor unions and employers continue to violate the state fair employment law either through ignorance or design. Prior to today we have never mailed a copy of that law to all employers and labor unions covered by it. Today we have placed in the mail to 2,400 businesses and 1,600 labor unions covered by this law a copy of it and of our poster summarizing it.

Because a number of employers and unions have asked this Commission for guidance in assuring that their actions are in conformity with the law and sound practice as regards treatment of minority group individuals, I have also sent a 'Merit Employment Checklist' and 'Fair Union Practices Checklist', with the request that a re-examination of policy be made to assure that equal opportunity is being extended to all regardless of race, creed, color, religion, national origin or ancestry, and that steps will be taken to increase opportunities for minority groups. We are not asking that the Checklists be returned to this Commission. They are for the use of the labor unions and employers to satisfy themselves as to their own policies and practices."

Copies of Mr. Carson's letters and the "Checklist" are attached.

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NORRIS H. ALLEN
ST. LOUIS

CLARENCE M. BARKSDALE
ST. LOUIS COUNTY

Dear Employer:

Many Missouri employers have asked this Commission for guidance in assuring that their personnel policies are in conformity with the law and sound practice as regards employment of minority group members. In the thought that it might be of interest to you, we are enclosing a Merit Employment Checklist which we have prepared in response to such requests.

We have designed this Checklist to encourage employers to re-examine their policies to be sure that they are extending equal employment opportunities to all qualified persons without regard to race, creed, color, religion, national origin or ancestry. The Checklist is for your own use. It is not to be returned to us.

We are also enclosing copies of the Missouri Fair Employment Practices Act and our FEP poster outlining the law.

We are pleased that since the passage of the law we have noticed more and more employers in Missouri utilizing minority workers in higher job classifications and discovering that this is good business. Such sound personnel practices have opened avenues of public and consumer relations, as well as opportunities for employers to use the best skills available in the labor market. We hope that this trend can be accelerated so more positive examples of minority group success can be held up before minority youngsters to encourage them to stay in school, train, and apply for jobs to which they heretofore had not aspired.

Your full cooperation in merit employment is essential if we are to resolve our human relations problems and bridge the gap that unfortunately still exists between persons of different ethnic backgrounds. Please call upon us if we may ever be of assistance.

Yours for a better Missouri,

Forrest P Carson

Forrest P. Carson,
Chairman

If you need additional copies of any of the enclosed items we will be glad to supply them.

[enclosed, Robertson to Rachlin]

PETER C. ROBERTSON
EXECUTIVE DIRECTOR
AREA CODE 314
PHONE 635-5726

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NORRIS H. ALLEN
ST. LOUIS

CLARENCE M. BARKSDALE
ST. LOUIS COUNTY

Dear Union Official:

Many Missouri Labor Unions have asked this Commission for guidance in assuring that their actions are in conformity with the law and sound practice as regards treatment of minority group individuals. In the thought that it might be of interest to you we are enclosing a Fair Practices Checklist which we have prepared in response to such requests.

We have designed this Checklist to encourage labor unions to re-examine their practices and policies to be sure they are extending equal opportunities to all qualified persons without regard to race, creed, color, religion, national origin or ancestry. This Checklist is for your own use. It does not need to be returned to us.

We are also enclosing copies of the Missouri Fair Employment Practices Act and our poster outlining the law.

We are pleased that since the passage of the law we have noticed more and more labor unions accepting minority group members not only into the union but into their apprenticeship and training programs on an equal basis and referring them through their hiring halls on a fair basis for skilled jobs. Unions which have been doing this have discovered that it is a sound practice.

We hope that this trend can be accelerated so more positive examples of minority group success can be held up before minority youngsters to encourage them to stay in school, train, and apply for jobs to which they heretofore have not aspired. Your full cooperation in merit employment is essential if we are to resolve our human relations problems and bridge the gap that unfortunately still exists between persons of different ethnic backgrounds. Please call upon us if we may ever be of assistance.

Yours for a better Missouri,

Forrest P. Carson

Forrest P. Carson
Chairman

If you need additional copies of any of the enclosed items we will be glad to supply them.

[enclosed, Robertson to Rachlin]

MERIT EMPLOYMENT CHECKLIST

These suggestions are offered to help you make equal opportunity a reality at all levels of your workforce.

The Missouri Commission on Human Rights administers the Missouri Fair Employment Practices Act which prohibits employment discrimination for reasons of race, creed, color, religion, national origin or ancestry. In addition to dealing with violations of the law the Commission seeks to insure that employers, employment agencies and labor unions improve their practices and thus widen opportunities for individuals from groups that suffered discrimination in the past. This Checklist will help you work toward that goal.

	YES	NO
1. POLICY		
A. Does your firm have in writing a clear non-discrimination policy on hiring and upgrading?	___	___
B. Is the policy posted in a conspicuous place and followed by those employees who hire, promote, and discharge?	___	___
C. Is the Missouri Fair Employment Poster posted in a conspicuous place?	___	___

* * *

COMMENT: *Management is aware how difficult it is to obtain compliance with any company policy. This problem is particularly true of equal employment policies. Make sure your policy is known and obeyed.*

2. PRE-EMPLOYMENT INQUIRIES		
A. Are application forms, interviews and help-wanted advertisements free of unlawful specifications relative to race, religion, or ancestry?	___	___
B. If you traditionally requested a photograph on your application forms, have you eliminated that request?	___	___

* * *

COMMENT: *Many employment forms have questions on them which have been in continued use for years without reappraisal. Sound management requires a continual re-evaluation of those forms as to the legality and the need for the questions on them.*

3. RECRUITMENT		
A. Do the employment agencies, labor unions, business or trade schools and other educational institutions which refer applicants to you practice non-discrimination, and have you made them aware of your non-discrimination policy?	___	___
B. Do your labor union contracts have non-discrimination clauses?	___	___

	YES	NO
C. Do you advertise to and recruit from sources which contain minority group members as well as whites?	___	___
D. Do you include the words "equal opportunity employer" or a similar statement in your ads?	___	___

* * *

COMMENT: *Many firms which have discriminated in the past but now hire on a merit basis have failed to notify their recruitment sources or minority groups of this policy. Firms which never discriminated should make sure they are not the victim of an employment agency or some other source which does discriminate.*

4. TRAINING

A. Is your training or apprenticeship program open to all regardless of race, religion, color, national origin, or ancestry, and are minority group members encouraged to apply?	___	___

5. UPGRADING

Are opportunities for promotion offered equally to all workers?	___	___

* * *

COMMENT: *Promotions and upgrading are influenced by low level supervisory personnel, such as foremen, who may not be in sympathy with your company policy. You may want to consider a review of the ethnic pattern of employees job by job and department by department to see if the evidence indicates reluctance or failure to hire or upgrade members of any group.*

6. COMMUNITY RELATIONS

Have you made sure that community practices in your area do not discourage minority group applicants and have you attempted to change those practices which do?	___	___

* * *

COMMENT: *Many Missouri employers have discovered that discrimination in housing or in other community services make it unpleasant for minority groups to live in the vicinity of the job and have discouraged members of those groups from seeking employment. Your firm may want to work with local government and citizens groups to make sure that this is not the case in your area.*

7. HIRING

Have you made sure that receptionists, medical personnel, personnel interviewers, and all others who have contact with job applicants are aware of and following merit employment policy?	___	___

8. REVIEW

Is a periodic review made of employment practices throughout the organization to ensure non-discrimination?	___	___

For Assistance or Advice
Contact
THE MISSOURI COMMISSION ON HUMAN RIGHTS
STATE CAPITOL
JEFFERSON CITY, MISSOURI

FAIR UNION PROCEDURES CHECKLIST

These suggestions are offered to help you make equal opportunity a reality at all levels of your union operations.

The Missouri Commission on Human Rights administers the Missouri Fair Employment Practices Act which prohibits employment discrimination for reasons of race, creed, color, religion, national origin or ancestry. In addition to dealing with violations of the law the Commission seeks to insure that labor unions, employers, and employment agencies improve their practices and thus widen opportunities for individuals from groups that suffered discrimination in the past. This Checklist will help you work toward that goal.

	YES	NO
1. Have you communicated to all union management a written statement on your equal employment policy?	___	___
2. Have you informed company management of your union's equal employment policy and are you supporting all efforts by management to hire on the basis of merit and qualification without regard to race, color, creed, religion, national origin or ancestry?	___	___
3. Is membership in your union open to anyone without regard to race, creed, color, religion, national origin or ancestry and are those who process applications aware of this policy?	___	___
4. Do you accept, welcome and encourage the acceptance of minority group youth in your apprenticeship training programs?	___	___
5. Have you informed all members of the union of their rights under the Missouri Fair Employment Practices Act and have you posted the FEP poster in all union halls, hiring halls and referral facilities?	___	___
6. If you operate a hiring hall or other referral system do you refer all persons without regard to race, and are all union employees who operate this facility aware of your policy?	___	___
7. Are all other union-sponsored activities conducted on a strictly non-discriminatory basis?	___	___
8. When you employed personnel to work for the union do you employ on the basis of merit and without regard to race, creed, color, religion, national origin or ancestry?	___	___

For Assistance or Advice
Contact
THE MISSOURI COMMISSION ON HUMAN RIGHTS
STATE CAPITOL
JEFFERSON CITY, MISSOURI

1/4/65 [enclosed, Robertson to Roehlin]

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ST. LOUIS COUNTY

TO: State and City Fair Employment Agencies and Human Rights Commissions
and
Interested Organizations and Libraries

FROM: Peter C. Robertson, Executive Director,
Missouri Commission on Human Rights

DATE: January 15, 1965

We thought you might be interested in the enclosed materials recently distributed by this Commission.

TABLES AND MAPS

Missouri 7-1-66/6-30-67

TABLE I
TOTAL EMPLOYMENT CASE DISPOSITION

through June 30, 1967

Basis for Closing	Total to 6/30/66	6/30/66 to 6/30/67	Total
No Jurisdiction	20	12	32
Withdrawn by Complainant	20	13	33
No Probable Cause	83	67	150
Satisfactorily Adjusted During Investigation	65	52	117
Conciliated	20	4	24
TOTAL CLOSED	208	148	356
Pending Investigation or Conciliation For Each Period	308 +	133 =	441
TOTAL RECEIVED (Total Closed Plus Total Pending)	516	281	797

TABLE II
PUBLIC ACCOMMODATIONS CASE DISPOSITION

through June 30, 1967

Basis for Closing	Total to 6/30/66	6/30/66 to 6/30/67	Total
No Jurisdiction	0	2	2
Withdrawn	0	0	0
No Probable Cause	0	0	0
Adjusted and Conciliated	17	28	45
Probable Cause but Respondent Ceased Business	0	4	4
TOTAL CLOSED	17	34	51
Pending Investigation or Conciliation For Each Period	29 +	17 =	46
TOTAL RECEIVED	46	51	97

MISSOURI (Cont'd)

TABLE III

COMPLAINTS REFERRED TO STATE AGENCIES BY THE FEDERAL EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (July 1, 1966 to June 30, 1967)

Top Five States	No. of Complaints	Pct. of State's Total Cases
Missouri	197	70
Illinois	138	42
California	131	15
New York	130	17
Ohio	89	14

TABLE IV—BASIS OF COMPLAINTS (July 1, 1966 to June 30, 1967)

Basis	Employment	Public Accommodations	Total
Race or color	195	51	246
Sex	76	0	76
Religion or creed	7	0	7
National origin or ancestry	3	0	3
TOTAL	281	51	332

TABLE V—CASE RESPONDENTS (July 1, 1966 to June 30, 1967)

EMPLOYMENT		PUBLIC ACCOMMODATIONS	
Respondents	Number of Complaints	Respondents	Number of Complaints
Automobile manufacturers	51	Taverns	13
Unions	46	Restaurants	7
Other manufacturers	27	Swimming pools	7
Packing companies	19	Trailer courts	4
Airplane manufacturers	9	Schools	4
Airlines	7	Barber and beauty shops	3
Schools	7	Welfare departments	3
Railroads	7	Other	10
Hospitals	4	TOTAL	51
Insurance companies	3		
Housing authorities	3		
Other	98		
TOTAL	281		

[illegible] v. Overstreet, [illegible] Georgia

Please Retain Original Order

IN THE

Supreme Court of the United States

October Term, 1965

No. 505

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation,
Petitioner,

v.

HALDRED OVERSTREET

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF FOR PETITIONER

ROBERT L. CARTER,
ANNE GROSS FELDMAN,
MARIA L. MARCUS,
BARBARA A. MORRIS,
LEWIS M. STEEL,
20 West 40th Street,
New York, New York 10018.

Attorneys for Petitioner.

E. H. GADSDEN,
B. CLARENCE MAYFIELD,
of Counsel.

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IN THE

Supreme Court of the United States

October Term, 1965

No. 505

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation,

Petitioner,

v.

HALDRED OVERSTREET

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF FOR PETITIONER

Opinion Below

The opinion of the Supreme Court of Georgia (R. 94-117) affirming and modifying the judgment of the trial court is reported at 221 Ga. 16, 142 S. E. 2d 816 (1965). The order of the Georgia Supreme Court denying defendants' motion for a rehearing (R. 120) is not reported.

Jurisdiction

The judgment of the Supreme Court of Georgia was entered on April 20, 1965 (R. 117). A motion for rehearing was denied on May 7, 1965 (R. 120). An extension of time until August 30, 1965, to file a petition for writ of certiorari was granted by Mr. Justice Black on July 30, 1965 (R. 120-121). Petition for writ of certiorari was filed on August 30, 1965, and certiorari was granted on December 6, 1965 (R. 121).

Question Presented

Whether petitioner National Association for the Advancement of Colored People, a New York corporation, has been deprived of its property without due process of law under the Fourteenth Amendment by being held liable in damages for acts performed without its knowledge and by persons beyond its control?

Statement

A. Prior Proceedings

Petitioner is the National Association for the Advancement of Colored People, a New York corporation (hereinafter called NAACP). It was tried with the Savannah Branch of the NAACP, two officers of the Savannah Branch individually, and the Georgia State Conference of NAACP Branches in November, 1963, in the Superior Court of Chatham County, in the State of Georgia, on a petition alleging conspiracy to destroy respondent's business by picketing his premises and inducing others to refrain from patronizing his establishment. The petition sought a temporary and permanent restraining order as well as compensatory and punitive damages. A temporary restraining order, entered on June 22, 1962, was made permanent by the jury after trial. The jury also awarded damages as against all of the original defendants in the amount of $85,793.05, consisting of $35,793.05 compensatory and $50,000 punitive damages. Thereafter, defendants filed a motion for a new trial based upon general grounds and on April 20, 1964 (additional time having previously been allowed by the trial court), twenty-four specific grounds were enumerated in an amendment to the original motion for a new trial. This motion was denied by the trial court on October 2, 1964. On appeal to the Supreme Court of Georgia, the clerk of that court by letter dated February 11, 1965, requested respondent to furnish supplementary

briefs on the liability of petitioner NAACP and Georgia State Conference of Branches and on the damage award (letter printed herein in Appendix). Thereafter, on April 20, 1965, that court affirmed the judgment as against two officers of the Savannah Branch, Mr. W. W. Law and Rev. F. D. Jaudon; the Savannah Branch of the NAACP; and the national office of the NAACP. It reversed as to the Georgia State Conference of Branches. Defendants' motion for a rehearing was denied by order dated May 7, 1965, and certain portions of the original opinion were rewritten but remained dated April 20, 1965. Mr. Justice Black granted petitioner's motion for an extension of time to file a petition for writ of certiorari until August 30, 1965. Certiorari was granted as to Question 2 in the petition on December 6, 1965.

B. Evidence Presented

Petitioner is a New York corporation. Mr. W. W. Law is a resident of Chatham County, Georgia, and President of the Savannah Branch of the NAACP and the Georgia State Conference of Branches, NAACP, both of which are unincorporated bodies (R. 51). Reverend F. D. Jaudon is First Vice President of the Savannah Branch, NAACP (R. 52). Respondent is the owner and operator of a retail open-air market located in a Negro residential area in Savannah.

On May 30, 1962, Robert Lee Bolton, a Negro boy of fourteen and respondent's only Negro employee, reported to the principal of his school and to his mother that he had just been physically assaulted by respondent who had falsely accused him of stealing merchandise from the market and had hit and kicked him in his head, stomach and back. The boy reported that respondent was intoxicated at the time of this incident. A complaint of assault against respondent was immediately lodged with the Savannah police by young Bolton. When the boy and a white

police officer went to respondent's premises to serve the warrant, they found him asleep in his chair, and the officer supported the boy's contention that his employer appeared to have been drinking. Young Bolton's injuries required his hospitalization for a period of forty-eight hours and the physician who examined and treated him at the hospital testified that he was in a condition of shock, with head swelling and stomach and back tenderness and pain. Bolton's mother testified that after she had taken her son to the hospital and returned home, she received several threatening telephone calls and that when local police failed to respond to her request for help, she contacted the Savannah Branch, NAACP.

Mr. W. W. Law testified that as a result of Mrs. Bolton's request for help, a meeting of the Savannah Branch was called for the next night, at which it was determined to organize a campaign to withhold patronage from respondent because of his assault on the young Negro boy (R. 52-53). He further testified that in order to effectuate this plan, it was decided to place two pickets on each corner of the street surrounding respondent's market to advise all potential customers that the pickets were not buying there because respondent had mistreated a Negro employee, and to request them also to withhold their patronage. The pickets were instructed to act in a courteous and orderly manner.

On the following day, pickets were stationed in accordance with this plan and the picketing continued until June 22, 1962, when the temporary injunction prohibiting their presence was entered.

Respondent testified that he at no time assaulted young Bolton, but had discharged him because he stole food. He claimed that the picketing of his premises had seriously injured his business because it resulted in the refusal of patrons to enter his store. It was respondent's contention that this refusal was based upon fear caused by the con-

gregation of persons in large numbers blocking the entrance to his market, threatening his employees and intimidating his customers. However, respondent did not present any evidence that the Savannah Branch, its officers and members, or the NAACP had engaged in or authorized the actions alleged or that they were physically present when they allegedly occurred. The only evidence connected with the Savannah Branch or its officers and members indicated that their behavior was entirely lawful (R. 55-58).

Both at the close of respondent's case, and at the conclusion of its own, petitioner made a motion to dismiss the petition for non-suit arguing that respondent had failed to prove any connection between petitioner and the illegal conduct which allegedly was the cause of his damage and that there was no proof that W. W. Law was an agent of petitioner or that any agent of petitioner had damaged respondent (R. 30). The motion was denied and the court proceeded to charge the jury that conspiracy and agency were inseparable in this case (R. 78); that it could find an illegal conspiracy among all defendants on the basis of the evidence introduced as to the Savannah Branch meeting, if it determined that the Branch members had not been justified in planning and executing a selective buying campaign because of an "individual altercation" between respondent and his young clerk (R. 78-79); that the jury could not view the picketing as constitutionally protected unless it found petitioner's version of the incident involving young Bolton to be true (R. 82-83); and that if the jury found the "mere presence" of the pickets had incited others unconnected with petitioners to illegal activity which harmed respondent, this would constitute sufficient evidence to hold petitioners legally responsible for respondent's injuries (R. 79). The jury then retired and returned a verdict in the amount of $85,793.05 as against all the original defendants.

In defendants' subsequent motions for a new trial, in their appeal to the Georgia Supreme Court and in their motion for a rehearing to that court, they continued to urge

as grounds for reversal that the inordinately large damage award constituted an attempt to limit the right of their members to freedom of association, that the judgment constituted a denial of freedom of association and a deprivation of property without due process of law in violation of the Fourteenth Amendment (R. 43-48, 90-94, 117-119).

Summary of Argument

The finding that the NAACP participated in an illegal conspiracy to damage respondent's business by virtue of the conduct of other defendants in this case, is completely unsubstantiated by the record. The NAACP had no knowledge of the Savannah Branch's picketing at respondent's market until it was served with the petition making it a defendant in this action. It did not supervise the conduct of the Savannah Branch, nor did it have any employees there; yet the court below affirmed that the branch officers were "agents" of the National Association. A meeting held by the Savannah Branch to plan a selective buying campaign was labeled the formation of a conspiracy, and the subsequent picketing was held to be unlawful even though evidence concerning the branch and its officers showed only that customers were urged not to patronize the store. The decision below, affirming the award of $85,793.05 in damages despite the absence of any supporting evidence, violates the Fourteenth Amendment to the United States Constitution. *Thompson* v. *Louisville,* 362 U. S. 199; *Fields* v. *Fairfield,* 375 U. S. 248; *Garner* v. *Louisiana,* 368 U. S. 157.

While Georgia law generally requires considerably more evidence than is present here to hold non-profit or charitable organizations liable for the acts of their agents (*Randall Bros.* v. *Volpe,* 82 Ga. App. 427 (1950); *Montgomery* v. *Walton,* 111 Ga. 840 (1900); *Lester Book & Stationery Co.* v. *Massee,* 138 Ga. 213 (1912)), the courts below refused to apply their customary standards to pe-

titioner. This conflicts with the guarantee of equal protection afforded by the Fourteenth Amendment. *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill,* 281 U. S. 673, 682.

Accepted agency principles make clear that the agency relationship inheres only when the principal controls the conduct of the agent with respect to the transactions at issue. *Esmond Mills* v. *C.I.R.,* 132 F.2d 753 (1st Cir. 1943), *cert. denied,* 319 U. S. 770. Considerable control can be found in the power of a corporation over its subsidiary; the parent may elect directors, make by-laws, increase or decrease capital stock Yet these factors do not in themselves create liability on the part of the corporation for the subsidiary's acts. *Cf. Stevens* v. *Roscoe Turner Aeronautical Corp.,* 324 F.2d 157 (7th Cir. 1963); *Fisser* v. *International Bank,* 282 F.2d 231 (2nd Cir. 1960). Since the degree of control exercised by such a commercial corporation is substantially greater than that of the NAACP over the groups of volunteers which act as its branches, there is no rational basis for finding an agency relationship in the latter case.

The NAACP differs in its basic nature and purpose from a business organization. It establishes broad policy goals but does not and could not administer the day-to-day activities of its branches. These branches have been formed by impetus from the locality in which they function so that the members can "make more effective the expression of their own views." *NAACP* v. *Alabama,* 357 U. S. 449, 459. This is the antithesis of the finding of the Georgia Supreme Court that the branches operate "in furtherance of [the National Association's] business and interest."

Where property is taken pursuant to a suit between private parties which has been arbitrarily and capriciously decided in violation of the applicable law and the evidence adduced, the due process guarantees of the Fourteenth Amendment are vitiated. *Williams* v. *Toole,* 108 F.2d 758, 759 (5th Cir. 1940); *State to use of Maines* v. *A./S. Nye Kristianborg,* 84 F. Supp. 775, 780 (D. Md. 1949).

ARGUMENT

I. The Judgment Below Resulted From Erroneous Charges by the Trial Court and Erroneous Rulings by the Trial and Appellate Courts Rather Than Evidence.

An analysis of the transcript before this Court will show that the finding that the NAACP participated in an illegal conspiracy by virtue of the conduct of other defendants to this action, is totally unsupported by the evidence.

Since both the witnesses and the judges rarely differentiated among defendants, designation of the record in order to deal only with testimony and judicial rulings affecting petitioner NAACP has been difficult. However, the four volume record has been sifted carefully and as designated (without objection from respondent as to its content) represents each instance in which the testimony and judicial rulings appear relevant to the liability of petitioner NAACP.

Although pleadings are not evidence, both the trial court and Supreme Court of Georgia placed heavy reliance upon the fact that the amended petition alleged that Mr. Law and the Savannah Branch acted "in and for the services of the National Association for the Advancement of Colored People as its agent, employee, and servant, within the scope of said agency, employment and service, and in furtherance of the business of said corporation" (R. 13).

The broad allegations of the amended petition concerning the agency relationship of the Savannah Branch, Mr. Law, and Rev. Jaudon to petitioner are supported in the record by only seven pages of testimony. The balance, not reprinted here, deals with the alleged activities of unknown persons who gathered at respondent's place of business, and with the conflicting versions of the incident involving respondent and his Negro employee which led to the institution of picketing.

Mr. W. W. Law was the only witness on the agency question. He categorically denied any conspiracy. He testified he was President of the Savannah Branch and of the State Conference of Branches (an original defendant against whom the Georgia Supreme Court found insufficient evidence to warrant a judgment), that the Savannah Branch was a unit of the National Association with which it shared its dues, that its members automatically became members of the National Association, and that orders or counsel from the national corporation to the local branch would be in the form of workshops and discussions held at the national convention. In relation to the decision to picket, Law testified that a circular advertising the Savannah Branch meeting headed "NAACP Mass Meeting Tonight, St. Phillips Monumental AME Church . . . F. D. Jaudon, pastor, at eight o'clock" had been prepared in the Savannah Branch office and had been "a direct action of the local branch of the NAACP" (R. 53). Law explained that the Executive Committee of the Savannah Branch had ratified the decision reached at the Branch meeting to engage in a "selective buying campaign" by means of peaceful picketing. As to ratification of the action by the NAACP, he testified he had not reported to the National Association on the picketing activity of the Savannah Branch until the temporary injunction was served on it through him and that in the "normal course of business" would only have done so "as a part of our annual activities" (R. 54). When asked if the "national branch at that time approve[d] of the action that had been taken by the local branch" he aptly summed up the absence of agency between the local and national organizations by replying "I don't really believe that that entered into the situation at all" (R. 54).

During the trial, counsel on behalf of the NAACP made several unsuccessful motions seeking dismissal for failure of the respondent to present evidence establishing a cause of action as against the corporation. That respondent had

failed to establish agency, is graphically shown by the trial court's comment during argument on the motion to dismiss made at the close of respondent's case:

> . . . would the fact of affiliation alone; that is they have the same general objects and purposes, to wit, the advancement of the Negro race, would the national association then be bound by the acts of the affiliated association, they not being incorporated, and, *so far as the evidence is concerned, there being no evidence to the effect that any member was the agent of the national corporation. In other words they were just affiliated* (R. 60-61) (emphasis supplied).

In ruling on the motion the next day, the court admitted it was a "close point" but found that "the question of agency is so closely tied with the question of conspiracy that in order to be consistent with its rulings [allowing into evidence testimony on activities by non-defendants to bind defendants], the Court will have to overrule the motion for non-suit" (R. 65).

In its charge to the jury, the court evolved its unexplained and unsupported legal theory that conspiracy and agency were intertwined, stating (in the only portion of its lengthy charge dealing specifically with the liability of the corporation):

> Now did the NAACP have an agent in Savannah? Who was that agent? Was it W. W. Law? Was it the Savannah Branch . . . as an *affiliate?* Is the National Association responsible for what this *affiliate* does? . . . Are they so connected that one is responsible for the act of the other by reason of the *agency;* by reason of their concerted activities as expressed in this *conspiracy?* As the Court sees it, you can't get *agency* and *conspiracy* separated in this case. A corporation may be a member of a *conspiracy* if its officers and agents take part in it and it furthers the *conspiracy* . . . Did they [NAACP] participate through their *agents* and members and people who had a right to bind them in this *conspiracy?* (R. 78) (emphasis added).

The emphasized words indicate the complete confusion created in the jury's mind by the use of the terms "affiliate," "agency," "conspiracy" as though they were interchangeable. It was never pointed out that the jury must find agency before it could find petitioner was a member of an alleged conspiracy. Rather, the jury was told its first task was to determine whether there was a conspiracy (R. 86).

Moreover, the only reference to the unique nature of the NAACP as a corporation was made only in passing. There was no attempt to show how the difference between the NAACP and a typical commercial corporation could affect the determination of whether agency existed.

> You have heard the evidence as to the organization. It is not an ordinary business organization in that sense. It is an organization to cover certain activities, as explained on the witness stand, activities for the advancement of colored people as they contend to protect them in their constitutional rights and in their rights as citizens (R. 77-78).

Although the court did advise the jury it could find differently as to the various defendants' liability, it did not charge that it could apportion damages among them, or that punitive damages might be awarded as to one or more of the defendants but not against all. The basis of the $50,000 punitive damages award can be found in the court's charge that the jury was justified in making such an award if it found that the original defendants had maliciously instituted the picketing in order to drive respondent out of business and did not believe that respondent was guilty of mistreating his Negro employee. The judicial theory behind the granting of punitive damages against a principal for the malicious acts of his agents is the feeling that this will result in the principal punishing his agent. Here, however, the NAACP was in no position to punish the unknown perpetrators of the allegedly illegal conduct.

It should be noted that while there was a paucity of evidence presented pertaining to the question of whether Law or the Savannah Branch were agents of the NAACP, to the extent necessary to hold the latter responsible for the malicious acts of the former, there was even less evidence on the basic liability question—*i.e.*, the liability of Law and the Savannah Branch for the activities of those broadly referred to as "pickets." In only two instances were respondent's witnesses able to name those they saw at respondent's market. In one case it was Law who was said to have been present when the witness saw the pickets "calling" customers out of the store and in the other, a man identified only as "Drayton" who was "one of the main head leaders". "Because he was always there. He stayed there day and night" (R. 55-58). There was no further identification of Drayton's association with any of the defendants and his personal action was also shown to have been only urging customers not to patronize plaintiff's store.

In denying the motion for a new trial, based upon twenty-four grounds of prejudicial error alleged to have been committed during trial, the court found improper form in the ground alleging failure to show agency between Law and the Savannah Branch and the NAACP and refused to rule on it (R. 37). As a basis for denying all other grounds, essentially directed at the consideration by the jury of illegal conduct by persons not shown to be connected with the NAACP or under its control, the court relied upon the wide latitude permitted in admitting evidence in cases involving the existence of a conspiracy (R. 34-36). The testimony objected to, however, pertained not to the conspiracy, but to overt acts allegedly committed as a result of the conspiracy. Although the objections were based on lack of agency, the court applied the test of admissibility applicable to conspiracy.

On appeal, the Supreme Court of Georgia cited as supporting evidence for the verdict, the title of the circular, the failure of the NAACP to protest jurisdiction when service was effectuated on it through Law, the use by the Savannah branch of the name NAACP, the "control" exercised by the National Association through its national convention and the "holding out" of the Savannah Branch as a representative of the NAACP.

The court was also influenced by the failure of the national corporation to disaffirm the acts of the branch, holding that it had a duty to do so and having failed to exercise this duty was assumed to have ratified its acts.

The basic error made by the courts below which culminated in the decision to allow liability to fasten on the national corporation was the consistent refusal to recognize that agency and conspiracy are not the same and that in this case it was essential that agency be established before conspiracy could be found. Unless Law or the branch was shown to have had the attributes of an agent of the NAACP, it is not possible to impute their acts to the corporation since it could only have been present through Law or the Savannah Branch. It thus becomes necessary carefully to examine the evidence relied upon by the state courts as indicative of an agency relationship.

1) The heading of the circular as an "NAACP mass meeting" indicates only that the accepted nickname for the Savannah Branch was "NAACP." This also seems clear from repeated use of the term "NAACP" by Law, the court, other witnesses and respondent's own counsel when reference clearly was to the branch. The full title of the branch is somewhat cumbersome for a catchy headline to a circular or for conversation. Such abbreviated names used with reference to local branches and affiliates

of national organizations abound.[1] They do not establish the relationship between the entities referred to in a sense sufficient to fix legal liability unless it can be established that a third person relied upon such similarity in name to his detriment. Since respondent's own verified petition alleges the meeting was called by the NAACP *and* the Savannah Branch, although there was no mention of the *branch* in the circular, it is obvious that the circular did not mislead respondent as to the sponsorship of the meeting. Indeed, the issuance of the circular was termed by counsel for respondent, as a "direct action of the local unit", thus indicating that the wording of the circular (which together with the use of a common name appears to be the only evidence available to support the state supreme court's conclusion that the Savannah Branch "held itself out" to be the representative of the national corporation) is inadequate to support such a sweeping finding. Aside from the fact that respondent's own petition indicates an absence of reliance on this alleged "holding out", his injuries here were in no way affected by the relationship of petitioner to the picketing. Respondent's damage was said to result from an atmosphere of lawlessness created by the presence of the pickets. It was thus far removed from the NAACP.

2. The failure of the national corporation to contest jurisdiction of the court and rather to defend the suit on its merits was deemed by the appellate court to support the jury's finding that Law was petitioner's agent. Validity of service of process upon a corporation is not germane

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[1] For example, when a television network identifies itself as "CBS" or "NBC" it does not add that it is the New York unit of that network; when one says he is a "Mason" he does not hasten to add what local lodge; identification as a "Democrat" or "Republican" does not necessarily involve the full name of the local political club. Circulars addressed to members of such local affiliates do not necessarily describe which branch is holding a stated event—the address alone is enough to advise the recipients of the circular that it is a locally sponsored affair.

to the question of establishing agency for the purpose of corporate liability. In any event, the NAACP did deny jurisdiction over it in its answer to the original petition and by its general demurrer to the petition. Throughout the trial, it never abandoned its contention that respondent had failed to establish agency.

3. The issue of ratification is irrelevant unless we assume that the local was petitioner's agent for the purpose of being held liable for its illegal acts. However, since the NAACP steadfastly denied that Law or the branch was its agent for any purpose, a need to disaffirm is not germane. Moreover, ratification or disapproval cannot be relevant until knowledge is established. The first notice the corporation had of the entire incident came with service of the petition and temporary restraining order on Law. All it had was the word of respondent as alleged in the petition, that an NAACP branch and local officers had taken certain action. The branch, however, argued that these allegations were untrue, that it had been peacefully picketing in a lawful exercise of its constitutional rights and was in no way involved with alleged illegal acts committed by unidentified persons. Thus, in order to take any position at all on the activities of the branch, it would have been necessary for the NAACP to accept without question the word of respondent—clearly not an impartial party. Thus, so far as petitioner was concerned, the local branch had committed no illegal acts and there was nothing in the situation requiring it to express disapproval.

Finally, ratification of illegal acts is appropriate only when the acts were committed in furtherance of the principal's business. It is strained argument to say that the NAACP stood to gain by Law's allegedly illegal acts. There is no analogy to situations where, for example, a collection agency may be said to gain from its employee's

overly zealous and perhaps felonious methods in pursuing delinquent accounts.

4. Evidence of connection between the Savannah Branch and NAACP was limited to the finding that the local affiliate has as part of its name the national association's initials, shares common broad goals with the national organization which are articulated at annual conventions, and that it shares a portion of its dues with that organization. The Georgia courts found this inconclusive evidence sufficient to support the trial court finding that "the locals are within the framework of the national organization and are used in furtherance of the latter's business and interest." (R.107). The Georgia Supreme Court cited the applicable statutory requirements to establish agency as follows:

> The relation of principal and agent arises wherever one person, expressly or by implication, authorizes another to act for him, or subsequently ratifies the acts of another in his behalf. (R.107).

However, there was no evidence here at all concerning the national's activities. Law testified as an officer of the local association and indicated in answer to all questions that the picketing had been purely *local* activity in which the national corporation was not, and under their relationship would not, be involved in any way—even insofar as knowing about it. There was no evidence adduced to contradict this view.

No questions were asked and there is no evidence on the record to show whether the national corporation had any control over the activities of its branches, whether Law was a paid employee of the national (or even of the local), what financial arrangements were between the national office and the local branches (who paid the rent, who signed the checks, etc.).

The statutory and case law cited by respondent and the courts below pertains to agents in the commercial

sense—that is, employees who are paid by the national corporation, whose activities are controlled by the national corporation and whose work is directly attributable to the economic interests of the corporation. None of these factors are, as a matter of fact, present here, and none of them were elicited by respondent for the record despite its duty to meet the burden of proof on these issues.

Thus the decision below, like those in *Thompson* v. *Louisville,* 362 U. S. 199, *Fields* v. *Fairfield,* 375 U. S. 248, and *Garner* v. *Louisiana,* 368 U. S. 157, is not sustained by the record and must be reversed as in violation of the Fourteenth Amendment.

II. The Judgment at Issue Contravenes State Law Regarding Corporations in Violation of the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

A. Although the courts below did not consider whether agency concepts are the same where a charitable as distinguished from a commercial corporation is involved, Georgia courts have elsewhere consistently shown a different attitude toward non-profit units. Indeed, a compilation of Georgia cases in this area reveals that in almost all instances the charitable corporation has not been held liable for the unauthorized acts of persons who, in a commercial corporate context, would surely have been designated as agents. See, *e.g., Randall Bros.* v. *Volpe,* 82 Ga. App. 427 (1950) (no agency found between church and church member in charge of building work who held himself out to be an agent and advised plaintiff that church would pay for necessary building materials); *Montgomery* v. *Walton,* 111 Ga. 840 (1900) (church trustees not liable for pastor's purchase of wood); *Lester Book & Stationery Co.* v. *Massee,* 138 Ga. 213 (1912) (political campaign committee not responsible for cost of political lists prepared at behest

of staff member after campaign concluded although lists were for purpose of providing funds to pay committee debts).

Indeed, the only cases found in which non-profit institutions were held liable for the unauthorized or illegal acts of their agents involved situations where the institution was found to have elected to benefit as a result of the unauthorized acts. *E.g., Haney School-Furniture Co.* v. *Hightower Baptist Institution,* 113 Ga. 289 (1901) (use of equipment purchased by school president without authority deemed ratification).

Explicit evidence of Georgia's policy toward charitable corporations is found in a statutory provision holding voluntary agents (frequently found representing charitable groups) to a lower standard of care than paid agents (Ga. Code 4-203) and in the requirement evolved through case law that the assets held in trust by a charitable institution may not be used to satisfy judgments based upon the negligence of its agents unless it is shown that there was negligence in hiring or retaining the agent (see *e.g. Morton* v. *Savannah Hospital,* 148 Ga. 438 (1924). Although neither of these legal principles are directly involved here, they do reveal a philosophy distinctly absent from the holdings of the courts below.

It is clear that members and officers of local NAACP branches dedicated to the elimination of racial discrimination are not working for compensation, but rather because they believe in the goals of their organization. The failure of the Georgia courts to apply their customary standards to the facts of this case, is a violation of equal protection of the laws. *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill,* 281 U. S. 673, 682; *Cf. NAACP* v. *Alabama,* 357 U. S. 449; *Staub* v. *City of Baxley,* 355 U. S. 313; *Wright* v. *Georgia,* 373 U. S. 284; *Williams* v. *Georgia,* 349 U. S. 375; *Bouie* v. *City of Columbia,* 378 U. S. 347.

B. In addition to failing to take into consideration the difference between non-profit and commercial corporations

in agency situations, the trial court and subsequently the Georgia Supreme Court violated state law when they permitted all proffered testimony of disorderly or illegal conduct to be placed before the jury without instructions to the jury that before it was authorized to consider such testimony, it must determine whether there had been sufficient independent evidence justifying a finding that the perpetrators of these acts has been agents of any of the defendants. See *e.g., Campbell* v. *Walker,* 20 Ga. App. 88 (1917); *Arnold* v. *Adams,* 4 Ga. App. 56 (1908); *Booker* v. *Lowe,* 122 Ga. 356 (1906).

Georgia rules of evidence were further distorted by the trial court's refusal to recognize that conspiracy and agency are not the same. Both the trial and appellate courts have affirmatively stated that where conspiracy is involved in a case great latitude in establishing it is permitted, and in effect held that where proof of conspiracy requires a showing of agency similar treatment must be allowed.[2] There is no support in the law for this interpretation. It is impossible for a corporation to conspire through a person not authorized to represent it. *Liberty Mutual Insurance Company* v. *Lipscomb,* 56 Ga. App. 15 (1937).

Moreover, where the conduct involved is malicious or willful, Georgia law specifies that liability attaches to the principal only where the malicious act was performed by the agent within the scope of the corporation's business, *Plumer* v. *So. Bell Tel. & Tel. Co.,* 58 Ga. App. 622 (1938), expressly authorized, in violation of a duty that the principal owed to the plaintiff, or ratified by the principal. *Southern Railroad Co.* v. *Chambers,* 126 Ga. 404 (1906);

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[2] *Woodruff* v. *Hughes,* 2 Ga. App. 361 (1907), which was relied upon heavily as establishing the right of a party asserting conspiracy to have wide latitude in proving it, did not involve a question of conspiracy between a principal and an agent.

Heath v. *Atlanta Beer Distribution Company,* 56 Ga. App. 494 (1937).[3]

In the instant case, even if we assume *arguendo* that Law or the Savannah Branch were general agents of the NAACP, this general agency would not authorize them to act illegally. While the NAACP may as a general policy permit *peaceful* picketing as a means of advising the public of racial discrimination, there is certainly nothing in the evidence or in the generally recognized pattern of conduct of the NAACP which could justify the conclusion that the NAACP acquiesces in violence. While it it true that the Georgia Supreme Court was initially concerned with the inadequacy of proof as to the liability of petitioner, its doubts were apparently resolved by the material on this question supplied by respondent's counsel pursuant to the court's request (see Appendix). However, none of the arguments made or authorities cited by respondent on the question of NAACP liability substitute for the lack of competent evidence on this point.

Nor was agency in the instant case to be inferred from petitioner NAACP's failure to disavow the acts of the branch, which the court below found to be ratification. The court paid lip service to the requirement that an agent's unauthorized acts must be ratified by its principal before liability for these acts may attach to the principal. However, the jury was given the term "ratification" without frame of reference or definition. It was not told that knowledge sufficient to make alleged ratification meaningful

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[3] In almost all of the cases involving the liability of a principal corporation for the tortious conduct of its agents, the courts were concerned only with whether the pleadings contained the necessary allegations as set forth above, and not with whether the evidence presented supported these allegations. See, *e.g., Davison-Paxon Co.* v. *Norton,* 69 Ga. App. 77 (1943). *Progressive Life Insurance Company* v. *Doster,* 98 Ga. App. 641 (1958). *Southern Grocery Stores* v. *Herring,* 63 Ga. App. 267 (1940).

"... [m]ust have been acquired by the principal otherwise than by the knowledge of the agent, the ratification of whose act is contended for." *Hale-Georgia Minerals Corp.* v. *Hale,* 83 Ga. App. 561, 562 (1951), or that:

> It is elementary that before a principal can be bound by a ratification of the act of an agent he must at the time of ratification have full knowledge of all the material facts by which he is to be bound. *Weathers Bros. Transfer Co.* v. *Jarrell,* 72 Ga. App. 317 (1945).

Patently, it was impossible for petitioner to have "full knowledge" of facts which were and are still in dispute.

In addition, Georgia law makes it impossible for an act to be subject to ratification unless it had been done for and in behalf of the person adopting it. *Smith* v. *Pope,* 100 Ga. App. 369 (1959); *Fed. Deposit Insurance Corp.* v. *Thompson,* 54 Ga. App. 611 (1936).

In summary, in dealing with the facts in this case the courts below showed no recognition that even in the typical commercial situation, the quality and quantity of evidence required to establish an agency relationship in which liability can be attached to the principal, varies in accordance with the character of the agent's act with which the principal is sought to be charged. Rather, the state courts here held in effect that the existence of an agency relationship is static and absolute and that once that relationship is found the principal is automatically responsible for any injuries its agent may cause another. This is not Georgia law.

A further ramification in this departure from Georgia law can be seen in the finding that the NAACP was responsible for the acts of persons completely unidentified and unknown to it. This is not even a case where the alleged agent is charged with committing an illegal act. Rather, it is an instance where the alleged agent of an absent principal

is charged with encouraging others to feel licensed to commit tortious acts. The failure of the Savannah branch to disaffirm the acts of others is imputed to the national corporation. The theory behind holding a principal liable for the torts of its agents cannot be thus overextended.

III. The Decision Below Deprived Petitioner of Property in Violation of the Due Process Clause of the Fourteenth Amendment.

The $85,000 judgment against the NAACP in this case represents a complete departure from sound agency principles. In essence, the agency relationship involves the right of the principal to control the conduct of his agent with reference to matters entrusted to the agent. *Esmond Mills* v. *C.I.R.*, 132 F. 2d 753 (1st Cir., 1943), *cert. denied*, 319 U. S. 770. The court below based its finding of petitioner's liability solely on its "affiliation" with its local branch. No attempt was made to go beyond the fact of affiliation to the question of control.

That the NAACP is a corporation is not relevant to the question of control. As was said by Mr. Justice Douglas and Carrol M. Shanks in "Insulation From Liability Through Subsidiary Corporations," 39 Yale L. J. 193, 194:

> Little will be gained by seeking to ascertain what a corporation is. It is not a thing. It is a method. It defies definition when removed from the background of the purpose attempted to be accomplished and the manner of accomplishing it.

A corporation organized and operated for profit is entirely different from one purposed to advance the ends of justice. This difference in the *raison d'etre* in turn leads to differences in structure and thus in the degree of control which can be exercised over affiliates. At one end of the spectrum is the power of a corporation over a wholly-owned subsidiary. At the other end is the relationship of the NAACP

and the local groups of volunteers which function as NAACP branches. Although the commercial corporation has sufficient control through the ownership of the subsidiary's stock to elect directors, enact by-laws, increase or decrease capital stock, and some or all of the officers or directors of the two corporations may be the same, these factors alone do not necessarily render the parent liable for the torts of the subsidiary. Only if the parent treats the subsidiary as its own property as far as management and operation are concerned, or if it interferes and directly controls the transactions involved, is it held to acquire the burdens as well as the benefits of the relationship. See *e.g., Stevens* v. *Roscoe Turner Aeronautical Corp.,* 324 F.2d 157 (7th Cir. 1963); *Fisser* v. *International Bank,* 282 F.2d 231 (2nd Cir. 1960); *Segall* v. *Food Fair Stores, Inc.,* 185 F. Supp. 81 (E. D. Pa. 1960); *Friedman* v. *Vandalia Railroad,* 254 Fed. 292 (8th Cir. 1916).

The parent corporation is insulated from liability if the following factors are adhered to in the structure of the two corporations: (1) Each is a separate, self-sustaining financial unit; (2) each has separate day-to-day activities; (3) each maintains separate financial records.[4] All of these factors are, of course, applicable to the relationship between the NAACP and any of its numerous branches. If the rule involving business corporations which own other corporations is predicated upon freedom from liability, even greater protection from liability should inhere in the case of the NAACP and the groups to which it permits the use of its name.

A closer analogy to the instant case is the law as it has been applied to the liability of international unions for the tortious acts of their locals. The *ratio decidendi* of *United Mine Workers of America* v. *Coronado Coal Co.,* 259 U. S. 344, is instructive here. In that case both a local and an

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[4] Douglas & Shanks, "Insulation From Liability Through Subsidiary Corporations," *supra,* at p. 196.

international union were held liable by the trial court for injury resulting from an unauthorized strike by the local. This Court reversed as to the international union holding at page 395:

> The argument of counsel for the plaintiffs is that, because the national body had authority to discipline district organizations, to make local strikes its own and to pay their cost, if it deemed it wise, the duty was thrust on it, when it knew a local strike was on, to superintend it and prevent its becoming lawless at its peril. We do not conceive that such responsibility is imposed on the national body.

Coronado is amplified by *Spica* v. *International Ladies Garment Workers Union,* 388 Pa. 382, 103 A. 2d 468, 479 (1957), which involved the question of whether the international was subject to service. The court stated:

> You may bring the various organizational levels into this Court, but before we shall convict any of the entities of tort, you must convince us of its own tortious conduct.

Just as the court in *United States* v. *International Union of United Mine Workers,* 89 F. Supp. 179, 181 (D. C. 1950) refused to "convict [the international union] on conjecture" for having in some way induced a mass strike of union members, so this Court should not sustain a judgment based upon the assumption that the illegality was occasioned by the NAACP.

In *Di Giorgio Fruit Corporation* v. *NLRB,* 191 F. 2d 642 (D. C. Cir 1950), *cert. denied,* 342 U. S. 869, the issue was whether a certain local of the National Farm Labor Union was subject to the jurisdiction of the National Labor Relations Act. Since the court found that the local consisted of agricultural workers who were expressly excluded from coverage the only question was whether the local was an agent of the national, which was subject to the Act. Despite

the requirement of dues splitting and use of a common name, the court at page 648 found:

> If on the evidence here present it were to be held that this local was the agent of the National it would be difficult to imagine a local member of the National which would not be such an agent.

It concluded that so to find would entail placing the local under the jurisdiction of the National Labor Relations Act, a result clearly not intended by the framers of that legislation. If in *Di Giorgio,* where the evidence showed that the national union had sent representatives for the purpose of aiding the local in conducting an organizational strike, the court could find no agency relationship between the two groups, certainly no such finding is warranted here.

As has been shown, the opinion below equates the NAACP with a commercial corporation whose affiliates are used "in furtherance of . . . [its] business and interest" (R. 107). The implication is that corporate business has been transacted for the benefit of the NAACP. This kind of analysis cannot be tailored to fit the situation shown in the record. When the Savannah Branch responded to local concern about respondent's treatment of a 14-year old employee, it was not acting for the benefit of the New York corporation. It acted in the interest of its members and the Negro community. Organizational activity of this kind ". . . is but the medium through which . . . individual members seek to make more effective the expression of their own views." *NAACP* v. *Alabama,* 357 U. S. 449, 459.

When the corporate process of establishing sub-divisions is compared with the formation of an NAACP branch, the function of the branch is illuminated and the important distinctions between these processes highlighted. A business corporation opens an office in a new geographical area by renting office space, hiring employees and setting up the operational details which will govern the transactions in which its employees are expected to engage. Conversely,

the impetus for setting up a NAACP branch comes from the locality in which it will function. Local citizens agree that they will band together to effectuate their mutual purposes and that they will ask the NAACP for permission to use the name as part of the name of their own. If the members agree with the principle of eliminating racial discrimination through peaceful and lawful means, they are accorded a charter by the NAACP. Thus they become, as this Court recognized in *NAACP* v. *Alabama,* 357 U. S. 449, 452, "chartered affiliates which are independent associations. . . ."

Any Procrustean attempt to expand the liability of the NAACP beyond the acts of its own employees and the programs which they direct must fail. There are more than 1500 NAACP branches, each of which have local programs and activities. The function of these branches is not to do business for the New York corporation but to associate for legitimate ends, which this Court has held "makes possible the distinctive contribution of a minority group to the ideas and beliefs of our society." *NAACP* v. *Button,* 371 U. S. 415, 427.

The ramifications of a decision affirming the liability of petitioner are far-reaching. The relationship between the NAACP and its branches is similar to that of a political party to local clubs. The purpose of both is to advance a social program. Both raise funds at the local level which may be used partially for national objectives. Both have a common name. In both, organizational control over affiliates is general, limited to establishment of broad policy goals rather than supervision and administration of day-to-day activities. Thus, the enunciation of a principle whereby such organizations are automatically liable for the acts of affiliates, would be destructive of the effective functioning of political parties, fraternal societies, patriotic national organizations, and similar entities.

A national political group could function within the confines of such a rule only by dispatching a supervisor to each local unit in order to oversee daily affairs. This would impose an impossible financial and structural burden upon such groups. As a practical matter, the necessity for assuming this kind of policing would drain all the personnel and funds of the national organization. It would vitiate any possibility of continuing its true function of formulating and expressing the broad policies and platforms which the local groups carry out in the context of their local problems.

An additional effect in the case of an organization such as the NAACP would be to distort the nature and therefore the purpose of the Association. The nature of the corporate petitioner is delineated in detail in *NAACP* v. *Alabama,* 357 U. S. 449. The principal objectives of the organization, a New York non-profit membership corporation, include as set forth in its certificate of incorporation:

> voluntarily to promote equality of rights and eradicate caste or race prejudice among the citizens of the United States; to advance the interest of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for their children, employment according to their ability, and complete equality before the law.

The historical fact of servitude, the repressive measures which followed emancipation and the ensuing and existing stigma of inferiority borne by Negroes provide both motivation and necessity for a unified effort to achieve, in fact, those civil rights long guaranteed in theory. It was not possible for the individual Negro or diverse groups of Negroes to effect any discernible change in a long enduring pattern of racial discrimination. Such changes are only possible through a national group. Thus it was that in 1911 the National Association for the Advancement of Colored People was formed.

The paramount purpose of the organization, the acquisition of equal rights for Negroes, cannot be achieved by a central office. The obstacles and impediments to racial equality in New England are dissimilar to those in the South; eradication of these obstacles and impediments requires effort at the local level by those immediately concerned. For this reason, the New York corporation can neither function nor carry out the purposes for which the organization was created without its branches. Therefore, without regard to *legal* liability, the destruction or impairment of its branches effects a mortal blow to the parent organization whose existence is posited on the eradication of racial prejudice in all areas of this country and the securing of equal rights for Negroes as *individuals*. Survival or insulation of the national corporation *sans* local units defeats the purpose of the organization. The branches represent those individuals, united by a common purpose, whose equal rights are sought to be protected and furthered. Branches are financially incapable of satisfaction of substantial money judgments from their own funds; consequently their continued existence requires payment of such judgments by the corporate petitioner. Accordingly, a *legal* lack of the corporate petitioner's responsibility, although consistent with the law, does not relieve the NAACP of restoring its branches to a position where they can function. It is elementary that a sizeable money judgment would attach to any and all funds which might be raised or acquired by the branch to further local programs. Existence of this "sword of Damocles" is more than sufficient to destroy the branch and to curtail any meaningful efforts to fight discrimination in that locality.

In this case, state action effectuated through judicial fiat purposed to remove local "civil rights agitators," is sought to be accomplished by striking at the local units. In the past, attacks upon the branch or the corporation have been purposed to suppress local activities. This

thesis is not novel to this Court. In *NAACP* v. *Alabama*, 357 U. S. 449; 377 U. S. 288, the expulsion of the corporate petitioner was a device to eliminate efforts to desegregate facilities in Alabama. Similarly, in *NAACP* v. *Button*, 371 U. S. 415, application by the State of Virginia of a barratry statute to the corporate petitioner would have successfully terminated *local* civil rights litigation in that state. Again in *Gibson* v. *Florida Legislative Investigation Committee*, 372 U. S. 539, it was the records of a branch which were sought by the state. Parenthetically, it should be noted that in all these instances the national organization came to the legal defense of the branch, an act which this Court considered neither an admission of the charges made nor creation of or participation in a conspiracy. In addition to preserving the right of freedom of association as a derivative of freedom of speech, a principle which pervades all of these cases, these decisions are of broader application. *Alabama*, *Button* and *Gibson* condemn any perversion of the law by a state which in purpose or effect stifles legitimate group activity purposed to foster and secure racial equality or to facilitate political (as opposed to partisan) expression. These decisions implicitly recognize that apparently minor and unrelated restrictions attempted through a variety of methods would, if successful, produce the same result: the paralysis and eventual impotence of the Association. Here, as in *NAACP* v. *Alabama*, 377 U. S. 288, 309, "This case, in truth, involves not the privilege of a corporation to do business in a State, but rather the freedom of individuals to associate for the collective advocacy of ideas."

All rules of well-settled law demand vacation of the verdict against the corporate petitioner but such reversal results in a pyrrhic victory. The erroneous judgment against the Savannah Branch effectively accomplishes the same result as the retention of the entire decision of the court below, since continued operation of local branches is essential to the unique character of the New York corporation.

The *sine qua non* of the decision here appealed rests on an erroneous statement of the law of conspiracy and agency (R. 34-36, 65, 78). The application of unconstitutional legislation (*NAACP* v. *Button, supra; Gibson* v. *Florida Legislative Investigation Committee, supra*); and the imposition of unlawful contempt orders (*NAACP* v. *Alabama*, 357 U. S. 449) cannot be legally distinguished from erroneous and unfounded statements of "controlling" law for the guidance of a jury. A jury verdict is not sacrosanct; it must be consonant with the law as stated by the court and where that statement of the law is erroneous, the verdict must fall. See *Henry* v. *Collins*, 380 U. S. 298, where the state court judgment was reversed because erroneous instructions to a jury resulted in a charge in conflict with constitutional principles. Civil judgments based upon such errors in law represent a basic denial of fundamental due process. As this Court noted in *Stein* v. *New York*, 346 U. S. 156 at page 181:

> Of course, this Court cannot allow itself to be completely bound by state court determination of any issue essential to decision of a claim of federal right, else federal law could be frustrated by distorted fact finding.

Petitioner does not suggest that the ambit of the First Amendment insulates any and all activity merely because it is pursued under a standard of freedom of association, or that an honest belief that the boundaries of the First Amendment encompass its acts, automatically affords protection. Rather, it is the state's erroneous application of the law upon which liability was premised, which offends petitioner's due process rights. In *Williams* v. *Toole*, 108 F.2d 758 (5th Cir. 1940), at page 759, the appropriate principle is succinctly stated:

> However, if a case between private parties is arbitrarily and capriciously decided, in violation of settled principles of law and contrary to undisputed

> facts, though the court so deciding had jurisdiction over the suit, the judgment may be in violation of the 14th Amendment.

Similarly, in *State to use of Maines* v. *A/S Nye Kristianborg*, 84 F. Supp. 775 (D. Md. 1949), where the state had imposed liability on a vessel, irrespective of fault, the Court stated at page 780:

> It requires no elaboration to demonstrate that a statute which, as we have seen, would impair a property right, by subjecting one's property to the claims of another without personal fault or legal liability of the owner, destroys vested rights of property and is therefore clearly invalid. It is the taking of property without due process of law contrary to the Fourteenth Amendment of the Federal Constitution . . .

What a state may not constitutionally accomplish by means of a statute, it is likewise precluded from doing by misstatement of the law. *New York Times* v. *Sullivan,* 376 U. S. 254, 276. In *Sullivan* this Court recognized the inhibiting effects of unconstitutionally secured civil damage judgments. The threat and use of civil process and onerous damage verdicts is restrictive and deterrent to the exercise of associational activities and produces the "chilling effect" on these rights which this Court averted in *Dombrowski* v. *Pfister,* 380 U. S. 479.

The subsistence and effectuation of its principal purposes and objectives require the corporate petitioner, because of its structure and nature, to acknowledge and satisfy its moral obligation to relieve those individuals who constitute its branch of the onerous judgment cast upon it by the court below. While the petitioner is confident that it cannot be held liable on the facts in this record without grave infringement of basic constitutional standards, it is respectfully submitted that the judgment below has been equally violative of due process and equal protection as

to the Savannah Branch, W. W. Law and Rev. Jaudon. Survival of that unconstitutionally acquired judgment undercuts this Court's past interpretations of the Fourteenth Amendment's guarantees.

CONCLUSION

Wherefore, for the reasons hereinabove stated, it is respectfully submitted that this Court should review the entire case on the merits and reverse the judgment below, not only as to petitioner, but as to the Savannah Branch, W. W. Law and Rev. F. D. Jaudon.

Respectfully submitted,

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Attorneys for Petitioner.

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of Counsel.

APPENDIX

(Letterhead of)

STATE OF GEORGIA

SUPREME COURT

ATLANTA

February 11, 1965

To counsel in Case No. 22814,
National Association for the Advancement
of Colored People et al. v. Haldred Overstreet

Dear Sirs:

Today we are directed to write you as follows: It appearing that defendant in error has not submitted argument either orally or by brief on the question of responsibility or liability of the defendants, the NAACP, a New York corporation, and the Georgia State Conference of Branches, NAACP, an affiliate of the NAACP, a New York corporation, for the alleged acts of W. W. Law and F. W. Jaudon, as officers of the Savannah Branch of the NAACP and for the acts of other members of the Savannah Branch, nor upon the question of damages, actual or punitive, counsel for defendant in error are requested to aid the court in the determination of these issues by submitting argument and authorities in support of their contentions on these questions, in supplemental brief to be filed in this office on or before February 18, 1965. Counsel for plaintiff in error are allowed to file reply brief on or before February 22, 1965.

Yours very truly,

HENRY H. COBB,
Clerk.

HHC/fc
Copy to each counsel of record.

OKLAHOMA MISCEGENATION LAWS, 1965

Box 45
Folder 20

Please Retain Original Order

OKLAHOMA MISCEGENATION LAWS, 1965

Box 4

Please Retain Original Order

March 12, 1965

Hon. Archibald B. Hill, Jr.
Dowell Building
407 North Durland
Oklahoma City 4, Oklahoma

Dear Archie:

Enclosed is the original and two copies of the memorandum you requested of us in support of your bill to repeal the miscegenation laws on marriage in Oklahoma.

Obviously you should make any corrections or additions that you deem appropriate. If there is anything further you'd like, please let me know.

I look forward to seeing you soon.

Cordially,

Carl Rachlin
General Counsel

CR:JG

enclosures - 3

March 12, 1965

Professor Norman Dorsen
New York University
School of Law
New York, New York

Dear Norman:

I want to thank you for making Bob Cordle available to prepare the memorandum on the Oklahoma miscegenation law. It was a fine job and I know will be of use to Representative Archibald Hill of the Oklahoma legislature who asked for it.

With kindest regards.

Cordially,

Carl Rachlin
General Counsel

CR:JG

cc: Mr. Robert Cordle

THE OKLAHOMA MISCEGENATION STATUTE IS UNCONSTITUTIONAL: IT VIOLATES THE EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT SINCE IT IS AN INVIDIOUS DISCRIMINATION AND SETS FORTH UNREASONABLE CLASSIFICATIONS: IT IS NOT NECESSARY TO A REASONABLE LEGISLATIVE PURPOSE. IT IS UNENFORCEABLY VAGUE.

The Law

Marriage being the basis of the family, the most fundamental unit in our society, the right to marry must be and is a protected liberty under the Fourteenth Amendment and one of the "basic civil rights of man." Skinner v. Oklahoma, 316 U.S. 535, 541 (1942). More than a "civil contract subject to regulation by the state, it is a fundamental right of free men." Perez v. Lippold, 32 Cal. 2d 711,714, 198 P.2d 17, 19 (1948). In Meyer v. Nebraska, 262 U.S. 390, 399 (1923) the Supreme Court said:

> While this Court has not attempted to define with exactness the liberty thus guaranteed [by the Fourteenth Amendment], the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to ...marry, establish a home and bring up children...

To choose one's own husband or wife is a right going at the very heart of personal liberty and freedom. Interference with such a personal choice in marriage constitutes a regulation of one of the most vital areas of its citizens' lives

Traditionally states have exercised considerable control over the institutions and incidents of marriage. Restrictions on marriage may be instituted by the state but they must be reasonable and related to a valid legislative purpose. The power to prescribe by law the age at which persons may enter into marriage, the duties and obligations which it creates, the effects upon the property rights of both parties are proper legislative purposes, Maynard v. Hill, 125 U.S. 190 (1888), and may be regulated by the state.

Since marriage is a protected liberty, however, the state's power at all times must meet the constitutional requirements of due process and equal protection of the law in the Fourteenth Amendment. To satisfy fundamental due process, a statue must bear a reasonable relationship to a valid legislative purpose. Nebbia v. New York, 291 U.S. 502 (1934). It must also be definite enough, not vague and uncertain, so that a person will have fair warning that his conduct is unlawful. U.S. v. Harriss, 347 U.S. 612 (1953).

The statute also has to meet the requirements of the equal protection clause of the Fourteenth Amendment in that the differences accorded one group of people as opposed to another must be reasonable and sound. McLaughlin v. Florida, 379 U.S. 184 (1964). The Oklahoma Miscegenation Statute must be judged in the context of these criteria.

The statute prohibiting interracial marriages, Tit. 43, §§ 12-13 (1961) states:

> § 12 Miscegenation Prohibited. The marriage of any persons of African descent, as defined by the Constitution of this State (Art. 23, § 11), to any person not of African descent, or the marriage of any person not of African descent to any person of African descent, shall be unlawful and is hereby prohibited within this State.
>
> § 13 Penalty for Miscegenation. Any person who shall marry in violation of the preceeding section shall be deemed guilty of felony and upon conviction thereof shall be fined in any sum not exceeding five hundred dollars, and imprisonment in the penitentiary not less than one nor more than five years.
>
> Oklahoma Constitution, Art. 23, § 11. Definition of Races. Wherever in this Constitution and laws of this State, the word or words, "colored" or "colored race", "negro" or "negro race", are used, the same shall be construed to mean or apply to all persons of African descent. The term "white race" shall include all other persons.

On its face the Oklahoma statute discriminates between persons because of their race. It is illegal for a Negro and a white to marry solely because of their race. Such a racial classification without evidence establishing a rational or necessary basis would be reduced to an invidious discrimination forbidden by the equal protection clause. McLaughlin v. Florida, supra. When dealing with a statutory classification by race, it "must be viewed in the historical fact that the central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States. This strong policy renders racial classifications 'constitutionally suspect,' Bolling v. Sharp, 347 U.S. 497, 499, and subject to the 'most rigid scrutiny,' Korematsu v. United States, 323 U.S. 214, 216, and "in most circumstances irrelevant' to any constitutionally acceptable legislative purpose. Hirabayashi v. United States, 320 U.S. 81, 100." McLaughlin v. Florida, supra at 192.

Where the exercise of the state police power appears to interfere with the constitutionally protected freedom from invidious official discrimination based on race, the law must bear heavy burden of justification. It will be upheld only if it is necessary and not merely rationally related to the accomplishment of a permissable state policy. McLaughlin v. Florida, supra

at 196, and cases cited.

The United States Supreme Court has never ruled directly on the issue of the constitutionality of the miscegenation law. Pace v. Alabama, 106 U.S. 583 (1882), did not involve a marriage. Although in McLaughlin v. Florida, supra, the issue was raised by the appellant, the court decided the case without specifically reaching the miscegenation issue. No decision on the merits of this issue was rendered in either Naim v. Naim, 350 U.S. 891 (1955), app. dismissed 350 U.S. 985 (1956); or in Jackson v. Alabama, (cert. denied) 37 Ala App. 519, 72 So.2d 114, (cert. denied) 348 U.S. 888 (1954).

Most of the state court cases have upheld the miscegenation statutes against equal protection objections on the basis of the equal application theory in Pace v. Alabama, supra (argued, by the way, by Florida in the McLaughlin, supra). Should a statute punish both Negroes and whites for an act, it is not discriminating against either race since persons of both races are being punished equally. However this narrow theory of equal protection of the law was soon swept away as the Court continually applied another standard: expressly renouncing the Pace concept as too narrow in McLaughlin, supra. It is an an individual that a person is entitled to the equal protection of the laws. McLaughlin v. Florida, supra at 191,

Buchanan v. Warley, 245 U.S. 60 (1917). Thus if N (a Negro) can not marry W (a white) because of the law, but X (a white) can marry W, then N as an individual is denied the equal protection of the laws (as well as W). Equal discrimination is not equal protection, for as the Court said in Shelley v. Kraemer, 334 U.S. 1 (1948), "equal protection of the law is not achieved through the indiscriminate imposition of inequalities." The essence of the right to marry must be the right to marry whom ever one wishes regardless of race, or any other irrelevant reason not related to a valid state purpose.

State courts which have upheld miscegenation laws against the due process arguments have used reasoning which is plainly suspect to both modern science and jurisprudence. The Oklahoma Supreme Court in upholding the miscegenation law found that it is the "positive policy of the state for the protection of the morals and good order of society against serious social evils." Blake v. Sessions, 94 Okla. 59, 220 Pac. 876, 879 (1923). The Court also attempted to justify the statute as being within the state's power to preserve and ensure the health of their citizens with a quote from the Georgia Supreme Court in Scott v. Georgia, 39 Ga. 321, 323 (1869):

The amalgamation of the races is not only unnatural, but is always productive of deplorable results. Our daily observations show us, that the offspring of these unnatural connections are generally sick and effeminate, and that they are inferior in physical development and strength to the full blood of either race ... Such connections never elevate the inferior race to the position of superior, but they bring down the superior to that of the inferior. They are productive of evil, and evil only, without any corresponding good.

Another Oklahoma case, Scott v. Epperson, 141 Okla. 41, 284 Pac. 19 (1930), reaches a similar conclusion that "the amalgamation of the white and black races is productive of deplorable results... The policy of the state is to protect society against social evils usually resulting from such amalgamation."

Were it to be demonstrated that biologically inferior children would result from mixed marriages, the requirement of a reasonable legislative purpose might conceivably be satisfied. While some courts have attempted such an analysis, ordinarily state courts simply repeat the outmoded, unscientific, emotional, genetical conclusions espoused in cases like Scott v. Georgia above, (quote from Ashley Montague).

The Virginia Supreme Court in Naim v. Naim, 197 Va. 80, 89, 87

S.E. 2d 749, 756, vacated and remanded, 350 U.S. 891 (1955), decision adhered to, 197 Va 734, 90 S.E. 2d 849, app. dismissed, 350 U.S. 985 (1956), found the legislative objective to be "to preserve the racial integrity of ... [the state's] citizens ... [and] to regulate the marriage relation so that it will not have a mongrel breed of citizens." The court, however, cited no authority or source for its opinions on race and heredity in Naim. The court's failure to do so may be due to the fact that all of the grounds for miscegenation laws rest on theories long deemed nonsensical by the world's community of scientists.

A defendant prosecuted under the Oklahoma statue for miscegenation would also be denied due process because the statutory racial definition is too vague. The vagueness of the legal definitions of race - persons of African descent - is a substantial reason why the creation of crimes depending on the race of the parties violates the Fourteenth Amendment. Does this apply to Rhodesians, Arabs or South Africans? Everyone not of African descent is transmuted into members of the white race, which even includes Indians (of both American and Asian types) or Chinese. But there are many Indians and Chinese who have been born in Africa. Are they

Africans under this law? Yet see Eggers v. Olson, 104 Okla. 297, 231 Pac. 483 (1924).

There are citizens of African nations belonging to every ethnic and anthropological classification. There is thus no serious test to determine who is of African descent. The test of "African descent" is surely as nebulous as the phrase "known to be a member of a gang" and the term "gangster" in the New Jersey law invalidated in Lanzetta v. New Jersey, 306 U.S. 451 (1930). Furthermore by classifying all non-Africans as white, regardless of the alleged race the person belongs to, clearly shows the law to be based solely on prejudice against American Negroes. A statute which fails to give adequate notice and fair warning to those affected by the statutory prohibition, and is based upon prejudice violates due process and equal protection.

The Science

These theories espoused so often by some state courts are nonsensical because they perpetuate three erroneous pseudo-scientific assumptions.

1. that "pure races" either exist in the present or have existed in the past;

2. that crossing between different racial groups results in biologically

inferior offspring;

3. that cultural level is dependent upon racial attributes.

Contemporary physical anthropology and human genetics categorically disprove these three assumptions. See Dunn and Dobzhansky, Heredity, Race and Society (1952); Montagu, Man's Most Dangerous Myth, The Fallacy of Race (4th ed. 1964). The many scientific authorites rejecting the "pure race" idea are collected in Weinberger, "A Reappraisal of the Constitutionality of Miscegenation Statutes," 42 Cornell L. Q. 208, 217, n. 68 (1957), and in Perez v. Lippold, 32 Cal. 2d 711, 198 P.2d 17 (1948), declaring the California miscegenation statute unconstitutional.

Twelve scientists representing physical anthropology and human genetics meeting under the auspices of UNESCO prepared a statement to effect a crystallization of scientific theory and opinion on matters of race and race differences. The Statement on the Nature of Race and Race Differences was released by UNESCO in September of 1952. The Statement at Article 7 concerning "pure races" said:

> There is no evidence for the existence of so-called "pure" races. Skeletal remains provide the basis of our limited knowledge

about earlier races. In regard to race mixture, the evidence points to the fact that human hybridization has been going on for an indefinite but considerable time. Indeed, one of the processes of race formation and race extinction or absorption is by means of hybridization between races. As there is no reliable evidence that disadvantageous effects are produced thereby, no biological justification exists for prohibiting intermarriage between persons of different races.

At one time the weight of older so-called "scientific" evidence may have presented a basis for the fear of biologically inferior offspring through intermarriage. Relying upon such "evidence", the semblance of an argument for a sufficient legislative objective could be made. Since, however, the scientific evidence erroneously assumed to be true has been proven false, the legislative objective for such statutes are also false. Legislative assumptions and determinations based upon such assumption cannot reverse empirical facts; nor may constitutional construction of state statutes be allowed to remain unchanged when the premises upon which ~~it is~~ They are predicated are proven false.

Similarly, other pseudoscientific justifications for racism, including the notions of biological disadvantages of race mixture and the

assumption that cultural levels depend on racial factors, are completely undermined by modern scientific knowledge. For example, the 1952 UNESCO Statement concludes:

> We have thought it worth while to set out in a formal manner what is at present scientifically established concerning individual and group differences.
>
> (1) In matters of race, the only characteristics which anthropologists have so far been able to use effectively as a basis for classification are physical (anatomical and physiological).
>
> (2) Available scientific knowledge provides no basis for believing that the groups of mankind differ in their innate capacity for intellectual and emotional development.
>
> (3) Some biological differences between human beings within a single race may be as great or greater than the same biological differences between races.
>
> (4) Vast social changes have occurred that have not been connected in any way with changes in racial type. Historical and sociological studies thus support the view that genetic differences are of little significance in determining the social and cultural differences between different groups of men.
>
> (5) There is no evidence that race mixture produces disadvantageous results from a biological point of view. The social results of race mixture whether for good or ill, can generally be traced to social factors.

And see, Montagu, Man's Most Dangerous Myth: The Fallacy of Race

(4th ed. 1964), for the noted anthropologist's full discussion of the most recent scientific evidence and research on race.

Miscegenation laws never rested on any firm scientific foundation nor were they intended to serve a scientific purpose. Miscegenation laws were based on racial prejudices and notions of Negro inferiority used first to justify slavery and later segregation. Scott v. Sanford, 19 How. (60 U.S.) 393, 409 (1857).

Conclusion

The miscegenation statutes are laws with a purely racial character and purpose, are relics of slavery, and as such constitute violations of the Fourteenth Amendment by the state. On their face, these racial laws run counter to the "color blindness" of the Constitution. Plessy v. Ferguson, 163 U.S. 537 538 (1895) (dissenting opinion). The United States Supreme Court has struck down numerous segregation laws rejecting all manner of state claims of Negro inferiority and rejecting claims of the legitimacy of a government requiring and encouraging racism. See, e.g., Brown v. Board of Education, 347 U.S. 483 (1954); Cooper v. Aaron, 358 U.S. 1 (1958); Gayle v. Browder, 352 U.S. 903 (1956); Shelley v. Kraemer, 339 U.S. 1 (1948); Buchanan v. Warley, 245 U.S. 60 (1917). The logic of these cases as well

as the reasoning in McLaughlin, supra, compel the same results with the miscegenation statutes.

MSS SEDFRE
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POOLE, BETTE et.al. VS BARNETT, ROSS R. GOV. of MISSISSIPPI 1963-1964
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

- X

BETTE POOLE, IDA HANNAH, individually and as representative of the class of Negro citizens of the City of Jackson, and JULIE ZAUGG,

Plaintiffs,

-against-

ROSS R. BARNETT, individually and as Governor of the State of Mississippi; ALLEN THOMPSON, individually and as Mayor of the City of Jackson; W. D. RAYFIELD, individually and as Chief of Police of the City of Jackson; JAMES E. SPENCER, JR., individually and as Municipal Judge and Justice of the Peace of the City of Jackson; J. A. TRAVIS and ROBERT G. NICHOLS, individually and as City Prosecutors of the City of Jackson; ROBERT GILFOY, individually and as Sheriff of Hinds County; and PAUL A. ALEXANDER, individually and as County Attorney of Hinds County,

Defendants.

- X

CIV ACTION 3489

The plaintiffs for their verified complaint allege:

Parties

1. Plaintiffs Bette Poole and Ida Hannah are citizens of the United States and residents of the State of Mississippi. Plaintiffs Poole and Hannah are members of the Negro race. They sue individually and as representatives of the class of Negro citizens of the City of Jackson and the State of Mississippi similarly situated. This class is too numerous to bring them all before the Court.

2. Plaintiff Julie Zaugg is a Caucasian citizen of the United States and a resident of the State of Mississippi. She sues individually and as a representative of white citizens

similarly situated. This class is too numerous to bring them all before the Court.

3. Defendant Ross R. Barnett is the Governor of the State of Mississippi. He is sued individually and in his capacity as Governor. He is a citizen of the State of Mississippi.

4. Defendant Allen Thompson is the Mayor of the City of Jackson, Mississippi. He is sued individually and in his capacity as Mayor. He is a citizen of the State of Mississippi.

5. Defendant W. D. Rayfield is the Chief of Police of the City of Jackson, Mississippi. He is sued individually and in his capacity as Chief of Police. He is a citizen of the State of Mississippi.

6. Defendant James E. Spencer, Jr. is Municipal Judge and Justice of the Peace of the City of Jackson, Mississippi. He is sued individually and in his capacities as Municipal Judge and Justice of the Peace. He is a citizen of the State of Mississippi.

7. Defendants J. A. Travis and Robert G. Nichols are City Prosecutors of the City of Jackson, Mississippi. They are sued individually and in their capacity as City Prosecutors. They are citizens of the State of Mississippi.

8. Defendant Robert Gilfoy is Sheriff of Hinds County, Mississippi. He is sued individually and in his capacity as Sheriff. He is a citizen of the State of Mississippi.

9. Defendant Paul A. Alexander is County Attorney of Hinds County, Mississippi. He is sued individually and in

his capacity as County Attorney. He is a citizen of the State of Mississippi.

Jurisdiction of the Court

10. The jurisdiction of the Court over this Complaint arises under Title 28 U.S.C. 1331 (a), 1343 (3), (4), 2201, 2202 and 2281; Title 42 U.S.C. 1981, 1983, 1985, and under the Constitution of the United States, and in particular the First, Fifth, Thirteenth and Fourteenth Amendments thereto.

11. The amount in controversy, exclusive of interest and costs exceeds the sum or value of $10,000.00.

The Cause of Action

12. The defendants and each of them have entered into a plan, agreement and conspiracy wilfully and with intent with other persons to the plaintiffs now unknown under the color of state law, statutes, constitution, custom, policy and authority, to deprive the plaintiffs and the class of Negro citizens of the City of Jackson and the State of Mississippi of rights, privileges and immunities granted to them as citizens of the United States by the laws and Constitution of the United States and in particular the First, Thirteenth and Fourteenth Amendments thereof.

13. On Sunday, October 6th, 1963, plaintiffs Poole, Hahhah and Zaugg in accordance with their consciences and beliefs attempted to exercise their right to the free exercise of religion guaranteed to them by the First and Fourteenth Amendments to the Constitution of the United States. Under the color of the authority of the Constitution and in accordance with their

rights, privileges and immunities as citizens of the United States they sought to enter the Capitol Street Methodist Church in the City of Jackson, Mississippi, a place of public worship, so that they might quietly and peacefully take part in divine worship.

14. As they stood in front of the lowest step to this Church, police officers of the City of Jackson, under the control and direction of defendants Thompson and Rayfield and other defendants pursuant to the aforesaid conspiracy, forcibly denied the plaintiffs their inalienable right to the free exercise of religion, by barring their entry to this place of public worship solely because the plaintiffs were members of the Negro race, or were accompanied by members of the Negro race.

15. Further in pursuance of this conspiracy, under color of laws of the State of Mississippi and in particular Title 11, Chapter 1, Sections 2090 and 2406 of the Code of Mississippi (1942 as amended) police officers of the City of Jackson, under the control and direction of the defendants then and there attempted to and did deter, intimidate and prevent the plaintiffs from exercising their fundamental rights to the free exercise of religion solely because plaintiffs Poole and Hannah were of the Negro race, by causing them to be arrested and imprisoned without any cause or justification.

16. Further in pursuance of this conspiracy the defendants caused the plaintiffs to be summarily brought to trial the following morning before defendant James E. Spencer, Municipal Judge and Justice of the Peace of the City of Jackson at which proceeding plaintiffs were deprived of the right to counsel and

the most elementary protections of due process of law all guaranteed to them as citizens of the United States by the Fourteenth Amendment to the Constitution of the United States. Plaintiffs were each sentenced then and there to be imprisoned for one year and fined One Thousand Dollars each for purported violations of Title 11, Chapter 1, Sections 2090 and 2406 of the Code of Mississippi. These sentences constitute cruel and unusual punishment as prohibited by the Constitution of the United States. These sentences were imposed by defendants solely for the purpose of deterring and intimidating plaintiffs and the class of Negro citizens of Jackson from exercising fundamental rights guaranteed to them by the Constitution of the United States and in particular the rights of assembly, to petition for redress of grievances and to the free exercise of religion protected by the First and Fourteenth Amendments to the Constitution.

17. Title 11, Chapter 1, Section 2090 of the Code of Mississippi which purports to make criminal the wilful disturbance of any congregation of persons lawfully assembled for religious worship, and Title 11, Chapter 1, Section 2406 which purports to make criminal acts of wilful trespass, are void and illegal under the Constitution of the United States as applied to the efforts of plaintiffs herein to invoke their fundamental right to the free exercise of religion guaranteed to them under the First and Fourteenth Amendments to the Constitution of the United States and the right to speech and assembly. The application of said state statutes to the exercise of First and Fourteenth Amendment rights by the plaintiffs is a utilization of the State's criminal processes in such a way as to enforce discrimination on account of race in palpable violation of the Thirteenth and Fourteenth Amendments to the United States Constitution.

18. In furtherance of this conspiracy the defendants have threatened and continue to threaten to enforce the said statutes in such a manner and with the sole purpose of intimidating and deterring the plaintiffs and the class of Negro citizens of the City of Jackson and the State of Mississippi from exercising their rights, privileges and immunities as citizens of the United States, and in particular their right to the free exercise of religion in houses of public worship without discrimination against them by reason of their race or color, an objective which is guaranteed to them by the First and Fourteenth Amendments to the Constitution of the United States.

19. In furtherance of this conspiracy the defendants have threatened and continue to threaten to enforce the said state statutes in such a manner and with the sole purpose of intimidating and deterring the plaintiffs and the class of Negro citizens of the City of Jackson and the State of Mississippi from exercising their rights of assembly, to freedom of speech and to petition for a redress of grievances, all guaranteed to them by the First and Fourteenth Amendments to the Constitution of the United States. The plaintiffs and the Negro citizens of Jackson have sought and continue to seek to utilize these constitutional rights in a peaceful and orderly fashion in an effort to eliminate the practice of state-imposed and state-sanctioned racial discrimination in Christian and other houses of divine worship. This aim and objective of plaintiffs and the class of Negro citizens of Jackson, Mississippi, is protected by the objectives and guarantees of the Thirteenth and Fourteenth Amendments of the Constitution of the United States as well as the Free Exercise Clause of the First Amendment. The objectives of

plaintiffs and the Negro citizens of Jackson, Mississippi to eliminate racial segregation in houses of public worship is fully in accord with the fundamental concepts of this Nation and the Christian religion that all men and women are created equal and are endowed by their Creator with certain inalienable rights.

20. Unless this Court grants the relief prayed for, the plaintiffs and the class of Negro citizens of the City of Jackson and the State of Mississippi will suffer serious, immediate and irreparable injury. The sole purpose, intention and effect of arresting and prosecuting the plaintiffs under the aforesaid state statutes and of threatening to continue to arrest and prosecute the plaintiffs and members of the class of Negro citizens under these statutes is to deter, intimidate, frighten and prevent the plaintiffs and the class of Negro citizens from exercising their inalienable right to the free exercise of religion and their rights to speech, assembly and to petition for redress of grievances in order to achieve the fundamental right to worship in a place of public worship without state-imposed or state-sanctioned racial discrimination and segregation.

Unless this Court restrains the operation and enforcement of these void and invalid state statutes insofar as they impose, sanction and enforce a policy of racial segregation upon the free exercise of religion these plaintiffs and the class of Negro citizens of the City of Jackson will continue to suffer the most serious, immediate, and irreparable injury.

They will continue daily to be deterred, intimidated and interfered with in the free exercise of religion and utilization of the most fundamental Federal constitutional rights all

guaranteed by the First and Fourteenth Amendments. The state-sanctioned policy of racial discrimination and segregation furthered, implemented, and enforced by these defendants through the utilization of the criminal processes of the state is a daily invasion and interference with the most fundamental right of citizens of the United States to the free exercise of religion, as well as the other guarantees of personal liberty set forth in the Constitution of the United States.

21. Plaintiffs have no clear and adequate remedy at law.

22. No previous application has been made for this relief.

Prayer for Relief

WHEREFORE, plaintiffs pray for the following relief:

1. That a permanent injunction issue restraining the enforcement, operation or execution of Title 11, Chapter 1, Sections 2090 and 2406 of the Code of Mississippi in so far as they purport to punish the plaintiffs or the classes they represent for peacefully exercising their right to the free exercise of religion in public houses of worship without discrimination against them by reason of race or color and that the defendants, their agents, attorneys and all others acting in concert with them be enjoined from impeding, interfering with or deterring the plaintiffs from exercising their right to the free exercise of religion without discrimination because of race or color in places of public worship.

2. That a declaratory judgment issue declaring that

Title 11, Chapter 1, Sections 2090 and 2406 are null and void in so far as they purport to punish the plaintiffs or the classes they represent for peacefully exercising their right to the free exercise of religion in public houses of worship without discrimination against them by reason of race or color, and that any convictions of plaintiffs heretofore obtained under such circumstances be declared null and void.

3. That an interlocutory injunction be issued restraining the defendants, their agents, attorneys and all others acting in concert with them, pending the hearing and determination of the prayer for permanent relief from

a) proceeding in any way with the prosecution and/or imprisonment of the plaintiffs under Title 11, Chapter 1, Sections 2090 and 2406 of the Code of Mississippi,

b) from arresting the plaintiffs or members of the classes they represent under color of said statutes for peacefully exercising their right to the free exercise of religion in places of public worship free of racial segregation and without discrimination against them by reason of race or color.

4. That a temporary restraining order be issued pending the hearing and determination of the request for interlocutory relief restraining the defendants herein, their agents, attorneys and all others acting in concert with them from proceeding in any way with the prosecution and/or imprisonment of the plaintiffs under Title 11, Chapter 1, Sections 2090 and 2406 of the Code of Mississippi.

Plaintiffs respectfully pray that the above relief be granted.

Plaintiffs, by their
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STATE OF MISSISSIPPI)
: SS.:
COUNTY OF)

BETTE POOLE, IDA HANNAH and JULIE ZAUGG, being duly sworn, depose and say that we are the plaintiffs herein; that we have read the foregoing complaint and know the contents thereof, and that the same is true to the best of our knowledge and belief.

BETTE POOLE

IDA HANNAH

JULIE ZAUGG

Sworn to and subscribed before me this 12th day of October, 1963.

/sgd/ James W. Wilson

My Commission Expires February 18, 1965

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 21196

BETTE POOLE, et al.,

Appellants,

-against-

ROSS R. BARNETT, Individually and as Governor of the State of Mississippi, et al.,

Appellees.

On Appeal from the United States District Court for the Southern District of Mississippi

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Preliminary Statement

This is an appeal from the denial by the District Court of appellants' application for a temporary injunction enjoining appellees from prosecuting and/or arresting appellants or members of the classes they represent for attempting to worship peacefully at the churches of their choice in Jackson, Mississippi.

Statement of Facts

(References to the Reporter's Transcript are indicated throughout by page references preceded by the letter "T".)

On October 6, 1963, Bette Anne Poole, Ida Hannah and Julie Zaugg, all students at Tougaloo Southern Christian College in Tougaloo, Mississippi, and hereinafter sometimes referred to as appellants, decided to worship together at Capitol Street Methodist Church in Jackson Mississippi. Miss Poole and Miss Hannah are Negroes; Miss Zaugg is white. That particular Sunday was known as World Wide Communion Sunday at Methodist churches throughout the world.

The appellants were followed by a Jackson police car shortly after they had left the Tougaloo campus, some eight miles away from Jackson. When they arrived at the church, they were met at the bottom steps by a white man to whom they announced that they had come to worship. They were told by this man that they were not welcome. At this moment, a policeman who had been standing at the side of the church joined the white man on the bottom step.

The policeman immediately took over the conversation with appellants who had never set foot on the steps and told them to go to one of the "nigger churches" in Jackson. He then gave Miss Poole and her companions two minutes to leave the area. As the girls turned to leave, the policeman accused them of taking too long and with the aid of the policemen in the police car which had followed them to the church, arrested them. They were never informed of the charges against them until their summary trial the next afternoon.

Because they were unable to obtain the services of an attorney to represent them in court, the three girls pleaded nolo contendere*/ to the charges of trespass and disturbing divine worship which were preferred against them. The Municipal Court judge sentenced them to six months in jail on each charge, the sentences to run consecutively, and to a fine of $500.00 on each charge, the fines to be cumulative.

After four days in jail, appellants were released in $1000.00 bail each. On October 12, 1963, the within action was filed on their behalf and on behalf of all members of the classes they represent. At the same time, a motion was made for a temporary restraining order and a temporary injunction, both seeking the enjoining of arrests and prosecutions, among others, for seeking to worship God in an integrated fashion.

A hearing was set on these motions for October 21, 1963. On October 20, 1963, appellants were arrested for again attempting to worship at the Capitol Street Methodist Church. On that same day, two other inter-racial groups were arrested for attempting to enter Trinity Lutheran Church and Galloway Memorial Methodist Church.

*/ Under Mississippi law, a nolo contendere plea does not foreclose a subsequent appeal to the County Court.

Included in the latter groups were four white Methodist ministers from Chicago, Illinois, John Garner, a white teacher at Tougaloo Southern Christian College, and four female Negro students at the same institution.

The group that attempted to enter Galloway included Garner, a member of that church, who had invited them to attend Sunday School at 9:30 that morning. They were arrested in the basement of the church by a policeman who had been alerted by his shift captain to the fact that "they had some groups coming to different churches in town and that they might cause some disturbance." (T 186-187).

Appellants were again arrested on the sidewalk in front of Capitol Street Methodist Church. They were taken into custody by Deputy Chief J.L. Ray who had arrived at the church a half-hour before the girls. He had gone there, he later testified, after talking to a Chicago newspaperman and the local Methodist Bishop. (T 170). Ray arrested appellants after they had been ordered to leave by W.H. Phillips, apparently a church steward. The police officer was not asked to arrest anybody by Mr. Phillips or anyone else.

Ray had also been an early arrival at Trinity Lutheran Church where he had shown up "before eight-thirty." (T 174). He had done this because he had information "that this group of ministers from Chicago . . . did intend to create some trouble at the different churches." (T 174). However, he couldn't identify anybody as having

told him this "in those words." (T 174). He arrested the group at Trinity, after an usher had handed a proclamation to its members and they "made no indication that they were going to leave." (T 177).

In no case, was Chief Ray or Officer Griffith, the two arresting officers at the three churches on October 20th, asked to arrest any person by anybody associated with any of the institutions concerned.

On October 21, the prosecutions of all the persons arrested on October 20 were removed to the United States District Court for the Southern District of Mississippi pursuant to the provisions of 28 U.S.C. 1443. Although respondents had made no written motion for remand, the district judge, at the opening of the hearing on appellants' motion for temporary injunctive relief at 10:00 A.M. on October 21st, 1963, permitted them to do so orally and adjourned the hearing until 2:00 P.M. At the latter time, the hearing was resumed and it was agreed that the evidence taken would be applied to the motion to remand.

At the conclusion of testimony that day, counsel for appellants urged the district judge to take custody of the persons whose prosecutions had been removed to his court pursuant to 28 U.S.C. 1446 (f) which provides that "if the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus and the marshal shall thereupon take such defendant or defendants into his custody. . . " The District Court refused to issue such writ of habeas corpus cum causa.

Appellants then applied to this Court for a writ of mandamus,

ordering the district judge to comply with Section 1446(f). On October 24, 1963, after hearing oral argument, Chief Judge Tuttle, and Circuit Judges Jones and Bell issued an order directing the district judge to "forthwith issue the writ of habeas corpus cum causa directing the custody of the petitioners be given to the United States Marshal."

Shortly after the hearing resumed at 2:00 P.M. on October 25, 1963, counsel for appellants submitted a writ of habeas corpus cum causa to the district judge who, to this date, has never signed it. Later in the hearing, he permitted appellants and their class to have a bail hearing before the United States Commissioner and, since they were ultimately released on bond at 8:30 that evening, the question of the writ of habeas corpus cum causa became moot.

When the hearing concluded on October 25, 1963, appellants renewed their motion for temporary injunctive relief. On December 7, 1963, no decision having been made thereon, appellants filed a motion requesting a prompt decision of their original motion. When the district judge took no action on either motion, appellants applied again to this Court for a writ of mandamus to decide. A hearing on this application was set for 9:30 A.M. on January 9, 1964, in New Orleans, Louisiana.

Without notice to counsel for appellants, who he knew had to travel more than a thousand miles to appear before this Court, the district judge at 3:28 P.M. Central Standard Time, January 8th, telegraphed this Court as follows:

"EDWARD W. WADSWORTH
CLERK, U.S. COURT OF APPEALS NEW ORLEANS

IN BETTE POOLE, ET AL, VERSUS ROSS R. BARNETT, ET AL NO. 21141 ON YOUR DOCKET FOR TOMORROW, ALTHOUGH I WAS NOT SERVED WITH PROCESS, I HAVE TODAY ENTERED AN ORDER DENYING THE APPLICATION FOR THE TEMPORARY INJUNCTION REQUESTED BY THE PLAINTIFFS IN SAID CASE WHICH IS NO.3489 HERE AND REQUEST A DISMISSAL OF THE MANDAMUS THERE AS HAVING BEEN UNNECESSARILY FILED AND AS BEING NOW MOOT

HAROLD COX U.S. DISTRICT JUDGE"

In view of the district judge's belated decision to decide appellants' motions,*/ the petition for a writ of mandamus to decide was withdrawn in open court and a statement thereof filed with this Court. Subsequently, an order was entered by this Court permitting such withdrawal. On January 10, 1964, a notice of appeal from the district judge's denial of appellants' motion for temporary injunctive relief was filed with the Clerk of the United States District Court for the Southern District of Mississippi.

On January 13, 1964, counsel for appellants were notified by the City Prosecuting Attorney, Jackson, Mississippi, that no adjournments of pending prosecutions would be permitted. It was at that time that appellants asked this Court to stay these prosecutions until its decision of the merits of their appeal. This Court set a hearing to determine whether the remaining twenty-four trials should be stayed.**/ On January 16, 1964, at a hearing on the question

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*/ The district judge filed findings of fact and conclusions of law which have not yet been made available to appellants' counsel who request the right to submit a further brief when they become available, prior to the February 13th argument.

**/ On January 14, 1964, appellants' counsel was unsuccessful in convincing Mr. Stennett to at least grant a short adjournment of four trials until after the hearing on the stay the next day before this Court. Accordingly, four Methodist ministers from New York had to travel to Jackson, Mississippi that evening.

of stays, the City Prosecutor agreed to continue the pending prosecutions until a decision of the full appeal which has been set down for February 13, 1964 in Jacksonville, Florida.

On December 12, 1963, a motion to include additional documents in the record was filed with the District Court. As far as counsel for appellants know, this motion has never been decided. The purpose of the motion was to include in the record an affidavit by John B. Garner to which was attached the letter of August 22, 1963, by Commissioner D.L. Luckey to his fellow parishoners at Trinity Lutheran Church. In this letter, Luckey warned his fellow churchgoers that anyone violating Trinity Lutheran's White Only policy would "be charged with 'Breach of the Peace', and dealt with according to law."

In short, even if one leans over backward in favor of the State, the facts clearly and indisputably show a <u>state-inspired</u>, <u>state-dominated</u> program of interference with rights guaranteed by the First and Fourteenth Amendments. The underlying arrests were engineered <u>solely</u> by the State without a single request for them by any member, officer, trustee or pastor of Capitol Street Methodist Church, Galloway Memorial Methodist Church or Trinity Lutheran Church. In fact, it is clear from the evidence below that the pastors of the three churches concerned neither wished state interference nor segregated congregations.

QUESTIONS PRESENTED

1. Whether Appellees' use of Sections 2090 and 2406 of the Code of Mississippi, 1942, to impose and enforce racial segregation violates the Fourteenth Amendment.

2. Whether Appellees' use of Sections 2090 and 2406 of the Code of Mississippi, 1942, violates the First Amendment as incorporated into the Fourteenth Amendment.

3. Whether the arrests and convictions of Appellants pursuant to these statutes deny them due process of law.

4. Whether the District Court has power to enjoin the threatened prosecutions of Appellants and members of their classes under these statutes.

SPECIFICATION OF ERRORS

1. The District Court erred in denying Appellants' motions for a temporary restraining order and a temporary injunction.

POINT I

APPELLEES USE OF STATE TRESPASS AND INTERFERENCE WITH RELIGIOUS WORSHIP STATUTES TO IMPOSE AND ENFORCE RACIAL SEGREGATION VIOLATES THE FOURTEENTH AMENDMENT.

1. The threatened arrests and prosecutions of appellants and members of the classes they represent for attempting to worship peacefully in churches in the City of Jackson, avowedly rest upon an attempt by an agency of the State to impose and enforce a policy of racial segregation. This is in open defiance of the Fourteenth Amendment of the Constitution of the United States. Brown v. Board of Education, 347 U.S. 483; Peterson v. City of Greenville, 373 U.S. 244; Lombard v. Louisiana, 373 U.S. 267; United States v. City of Jackson, Miss., 318 F.2d 1 (CA 5, 1963); Bailey v. Patterson, 323 F.2d. 201, (CA 5, 1963).

It is now settled law beyond any doubt that trespass statutes and other police measures may not be utilized to enforce a state command of racial segregation. Peterson v. City of Greenville and Lombard v. Louisiana, both supra. Arrests and prosecutions to enforce a clearly expressed state policy of racial segregation are state action violative of the Equal Protection Clause, Peterson v. City of Greenville, supra, and "a conviction under the State's criminal processes employed in a way which enforces the discrimination, cannot stand", Lombard v. Louisiana, supra.

2. The record before this Court presents a not unfamiliar picture of an open and deliberate use of state power to enforce a

policy of racial segregation by the City of Jackson, Mississippi. Cf. United States v. City of Jackson and Bailey v. Patterson, supra. The actions of the City of Jackson officials from the arresting officers to the Mayor and City Commissioners openly express a determination to enforce a state "command" of racial segregation. Cf. Lombard v. Louisiana, supra.

This Court has had the recent occasion of examining the conduct of Jackson officials in the area of racial segregation. United States v. City of Jackson and Bailey v. Patterson, supra. We would suggest that the present record even more sharply reveals the "steel-hard, inflexible, undeviating official policy of segregation" of the State of Mississippi and the City of Jackson. United States v. City of Jackson, supra, at p. 5. This is not a record in which an appellate court must sift through layers of sophisticated rationalizations to uncover the essence of state action. Cf. Griffin v. Maryland and companion cases, #'s 5, 6, 9, 10, 12 and 60, October Term, Supreme Court, 1963. Here state action to enforce racial segregation is naked and clear.

Even the actions of the arresting officers is not here veiled by the disingenuous statement that the action was required to preserve the public peace. Cf. City of Jackson, supra, at p. 5. The uncontradicted testimony of Miss Betty Anne Poole reveals the blunt purpose of the arrests as an enforcement of a state command of racial segregation. Miss Poole testified to the circumstances of her arrest in the following words:

"Q And would you describe to the Judge exactly what happened at the time Capitol Street Methodist Church on Sunday, October 6th, from the time you arrived there until you were arrested?

"A Well, when we arrived we were followed by two policemen in a police car and we parked across the street on the other side of the church and the policemen parked right behind us as we got out of the car. We were going toward the church the policemen backed up and parked directly in front of the church. As we crossed the street there was a policeman on the right hand side of the church who was supposedly directing traffic, at that moment he wasn't, so he started approaching the church steps. When we arrived at the church steps the usher there was one usher and there were two men who might have been ushers standing on top of the stairs. When we arrived at the bottom of the steps the usher asked us what did we want and we told him we had come to worship and he said that you are not welcome and we said well isn't this world wide communion Sunday, can't we worship as christians and the police officer started interrupting, he said you heard you are not welcome here, there are other Negro churches down the street for you to worship and he said I am giving you two and a half minutes to leave and we asked the we asked the usher if he would like to have one of our pamphlets that we had, it was a letter from the Birmingham jail by Reverend Martin Luther King. As the usher said, as the usher was fixing to say no the policeman said no we don't we don't want none of that so he grabbed me by the arm and at this point I said I said don't push me and the policeman said well why don't you go to another church and then we we asked the usher again why we couldn't worship and the usher said that you aren't that you aren't welcome so we turned to leave and just as we fixing to step down off the curb the policeman called us back and told us that we were under arrest." */

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*/ The cross-examination merely emphasized the role of the policeman in announcing and enforcing the policy of racial segregation.

"Q Now to go back to your situation out there at the church steps state to the Court is it not true that Mr. L.G. Head whom you know to be an usher of that church asked you to leave those premises?

"A I don't know him but he told us that we weren't welcome. The policeman was the one that was doing most

Nothing could be clearer than this uncontradicted tesimony. The arresting policeman not only was enforcing a policy of racial segregation. He announced the policy. We hardly think it required to argue at any length that the Constitution will not permit officials of a state to promulgate and enforce a command of racial segregation. The Fourteenth Amendment prohibits Jackson police from

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(Footnote continued from preceding page)

of the talking because he always interrupted the usher when he wanted to say something.

"Q The man with whom you conferred who was not a policeman you understood he was an usher of that church?

"A Yes.

"Q That party is the one that asked you to leave the premises?

"A He said he told us that we weren't welcome.

"Q And did he not go a step further and ask you to leave?

"A I didn't hear him say that.

"Q And it was not until after you had your conversation with the usher that the police came into play, is that correct?

"A The police was always interrupting when the usher wanted to say something to us and he gave us two and a half minutes, I had my watch on, I was looking and we left before two and a half minutes. The policeman was so emotional and excited and angry until he called us back and said we were under arrest.

"Q You mean you left complied with his wishes and then came back?

"A Right. We had to because he called us back."

ordering Negro citizens to worship only in segregated churches in at least as forceful a fashionas it prohibits the posting of white only signs in front of bus terminals. Cf. City of Jackson, supra.

The initiative of the police in announcing the policy of racial segregation and enforcing it by arrests at the Capitol Street Methodist Church is equally obvious in all the other instances of arrests for attempting to worship. It is extremely revealing in this respect that no arresting officer could testify below that he had ever been asked by any member of the churches involved to make any arrests or force anyone to leave. Deputy Chief J.L. Ray, who was involved in arrests at Capitol Street Methodist Church and Trinity Lutheran Church on October 20, 1963, swore that "no word" was ever said to him about arresting anybody at either church. (T 177).

> "Q But no word was ever said to you about arresting anybody was it?
>
> "A No, that's correct."

It was the "operation of [his] own mind as to the arrests." (T 179).

Officer Joseph David Griffith, who had arrested the group at the Galloway Memorial Methodist Church on October 20, 1963, likewise testified that he had not been asked to apprehend anyone at that church. (T 190).

> "Q Did he [the usher] tell you to arrest them?
>
> "A No, sir, he didn't tell me . . ."

What is most significant is that the ministers of two of the three churches concerned specifically denied on the stand that they had asked for either police protection or for the arrests of any

persons desiring to worship at the respective institutions. Dr. W.J. Cunningham, the pastor of Galloway Memorial Methodist Church, could not have been more definite on this score.

> "Q Did you ask him [Mayor Thompson] for any police help with reference to maintaining any policy of racial segregation in your church?
>
> "A No, I did not. (T 156)
>
> "Q Have you ever made any request of the Police of Jackson to arrest anybody for attending worship at your church because of any racial difference?
>
> "A I have not." (T 157)

Reverend Wade Koons of Trinity Lutheran Church, likewise unequivocally stated that he ordered no arrests. (T 162).

> "Q Have you ever asked any member of the official family of the City of Jackson, Police, mayor, detectives to keep your church segregated?
>
> "A No. No." (T 163).

In fact, like Dr. Cunningham who said that he went along with the national policy of the Methodist Church that "all people are welcome to your church regardless of their color," (T 157), Reverend Koons testified that he had no objection to anybody worshipping at Trinity Lutheran "unless they were disturbing." (T 167).

His own desires became crystal clear when he was interrogated by the district judge.

> "Q Was their arrest in violation of your wishes in this connection?
>
> "A In my personal opinion.
>
> "Q I didn't ask you for an opinion. I asked you if it was violative of your wishes as the minister of this church

that they be arrested?

"A I certainly would not order, Judge, the arrest of anyone unless they were disturbing." (T 167)

And he commented that he had not heard that any of the people who had been arrested at his church on October 20, 1963 had disturbed divine worship. (T 167-168)

Since no minister, including Reverend Granberry,*/ asked for police protection to prevent the integration of his church or requested the arrest of any person attempting to worship there, it is difficult to understand just why anybody was arrested and charged with either trespass or interfering with divine worship, or why police officers were regularly waiting at each church shortly before the groups of integrated worshipers attempted to attend services, unless the City of Jackson was independently and actively seeking to enforce its "steel-hard" policy of racial segregation.

The record is thus strikingly clear. In none of the churches involved were the arrests requested by the congregation or the ministers in spiritual leadership of the churches. To the contrary, two of the ministers forcefully repudiated the conception that the use of State power to enforce a policy of racial segregation was at their request or their congregations'. And the third minister, in testimony adduced by the appellees themselves in affidavit form studiously avoided any reference to a request for police assistance.

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*/ The only testimony of the third minister involved, Rev. Seth W. Granberry, of the Capitol Street Methodist Church, is contained in an affidavit submitted by the appellees. It is highly significant in this respect that Rev. Granberry, like his two colleagues, does not testify that he at any time asked for or requested in any way police action to arrest the appellants.

There is not a shred of evidence to sustain a conclusion that police intervention was at the behest of the congregations involved. What is perfectly obvious is that without the slightest indication of a breach of the peace or other disturbance the police of Jackson on every occasion actively and aggressively intervened to enforce a State command of racial segregation. As far as this record shows there is not the slightest indication that any of the Congregations involved desired in any way this intervention of State coercive power. To the contrary, the only affirmative evidence from the ministers themselves is that whatever may have been the churches own internal attitude on the question of segregation they deplored the use of police power under these circumstances.

But as in City of Jackson, supra, we need not speculate upon the extent of State action based upon the activities of the arresting officers alone. The frank testimony of the Mayor of the City reveals a forthright city policy to utilize every resource of power in its control to enforce a policy of racial segregation in places of public worship. The testimony of Mayor Thompson openly states that the purpose of the utilization of police power and the enforcement of the police statutes involved here is to enforce a policy "to keep the races strictly separate". (T 144). In response to a direct question as to whether police power will be used to enforce such policies, Mayor Thompson testified as follows:

> "Q All right now I will end with just one question then if anybody in the city decided that their policy shall be in their establishment whatever it be, church, business, what have you, shall decide that it shall be

their policy to keep the races strictly separate, not to serve Negroes, we will take that as the only question I will ask, then and told you of his policy you would then utilize whatever means you had officially at your disposal?

"A That's right.

"Q To perpetuate or adhere to that policy?

"A That's right." (T 144-145)

With commendable candor Mayor Thompson does not here engage in the "disingenuous quibble" commented upon in City of Jackson, supra, to the effect that the police power was really only used to protect against "breaches of the peace". Here, as in Bailey v. Patterson, the Jackson formula appears once again in its stark reality. As the Mayor quite freely concedes, the use of police power is directly designed not to meet the problems of maintaining order, but to enforce a policy of segregation of the races. But as this Court has been required to remind the City of Jackson again and again, this the Constitution prohibits. Bailey v. Patterson, United States v. City of Jackson, both supra.

Any remaining doubt as to the totality of State action in announcing and enforcing a policy of racial segregation is dispelled by the enlightening discussion of the Jackson formula in the letter addressed by City Commissioner Luckey to the Congregation of the Trinity Lutheran Church. Commissioner Luckey bluntly warned his fellow parishoners on official stationery that anyone interfering with the segregation of the church would be "handled according to law." He went on to state that the method of using breach of the peace statutes

to prevent desegregation in Jackson had been used by the City "for a number of years and the lawyers of the NAACP have tested it in every court of the land including the Supreme Court of the United States and we have not had a vote against it." Accordingly Commissioner Luckey promised that anyone attempting to worship in an integrated fashion would be "charged with 'Breach of the Peace'". Commissioner Luckey seems to have believed that this formula of enforcing racial segregation safely circumvents the prohibitions of the Fourteenth Amendment. (See Luckey Letter, Record on Appeal). However, only one month before his letter, this Court had exposed this device for evading the constitutional mandate stating,

> "Here the record shows that one of the sophisticated methods for circumventing the law is for local police to eschew 'segregation' laws, using in their place conventional breach of peace or trespass laws as instruments for enforcing segregation, euphemistically termed 'separation'". United States v. City of Jackson, at p. 7.

As in City of Jackson, this Court will not permit "sophisticated circumvention" to mask defiance of the Constitution, for as this Court pointed out in Baldwin v. Morgan, 287 F.2d 750, "what is forbidden is the state action in which color (i.e., race) is the determinant."

3. The open and express policy of the City of Jackson to enforce racial segregation in places of worship reflects the impact of the clear statutory command of the State of Mississippi. Section 4065.3 of the Mississippi Code entitled "Compliance with the Principles of Segregation of the Races," places upon the appellees here, the officials of the City of Jackson, a mandatory duty to prohibit

the "mixing of the white and Negro races in . . . public places of amusement, recreation or assembly in this state . . . "*/

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*/ Section 4065.3 of the Mississippi Code, ("Compliance with the Principles of Segregation of the Races") reads in part:

"1. That the entire executive branch of the government of the State of Mississippi, and of its subdivisions, and all persons responsible thereto, including the governor, the lieutenant governor, the heads of state departments, sheriffs, boards of supervisors, constables, mayors, boards of aldermen and other governing officials of municipalities by whatever name known, chief of police, policemen, highway patrolmen, . . . are hereby required, and they and each of them shall give full force and effect in the performance of their official and political duties, to the Resolution of Interposition, Senate Concurrent Resolution No. 125, adopted by the Legislature of the State of Mississippi on the 29th day of February, 1956, which Resolution of Interposition was adopted by virtue of and under authority of the reserved rights of the State of Mississippi, as guaranteed by the Tenth Amendment to the Constitution of the United States; and all of said members of the executive branch be and they are hereby directed to comply fully with the Constitution of the State of Mississippi, and said Resolution of Interposition, and are further directed and required to prohibit, by any lawful, peaceful and constitutional means, the implementation of or the compliance with the Integration Decisions of the United States Supreme Court of May 17, 1954 (347 US 483, 74 S Ct 686, 98 L ed 873) and of May 31, 1955 (349 US 294, 75 S Ct 753, 99 L ed 1083), and to prohibit by any lawful, peaceful, and constitutional means, the causing of a mixing or integration of the white and Negro races in public schools, public parks, public waiting rooms, public places of amusement, recreation or assembly in this state, by any branch of the federal government, any person employed by the federal government, any commission, board or agency of the federal government, or any subdivision of the federal government, and to prohibit, by any lawful, peaceful and constitutional means, the implementation of any orders, rules or regulations of any board, commission or agency of the federal government, based on the supposed authority of said Integration Decisions, to cause a mixing or integration of the white and Negro races in public schools, public parks, public waiting rooms, public places of amusement, recreation or assembly in this state."

As in Peterson v. City of Greenville, supra, a state statute here commands the policy of segregation. The State of Mississippi has provided by its statute that the decision as to whether a place of assembly is "to be operated on a desegregated basis is to be reserved to it" [the state]. Peterson at p. 1121. And as in Peterson, "when the State has commanded a particular result it has saved to itself the power to determine that result and thereby 'to a significant extent' has 'become involved' in, and in fact, has removed that decision from the sphere of private choice". Peterson at p. 1121.

And as in Peterson, in the face of the command of the statute, trespass convictions could not stand, "even assuming" that the church independently desired that result for,

> "When a state agency passes a law compelling persons to discriminate against other persons because of race, and the State's criminal processes are employed in a way which enforces the discrimination mandated by that law, such a palpable violation of the Fourteenth Amendment cannot be saved by attempting to separate the mental urges of the discriminators." Peterson at p. 1121.

The decision of the Supreme Court last term in Peterson v. City of Greenville is thus totally dispositive here. The threatened arrests and prosecutions would have "the effect, which the State cannot deny of enforcing . . . " the state statute prohibiting "mixing" of the races in places of assembly. Such a "palpable violation of the Fourteenth Amendment" will not be tolerated. Peterson v. City of Greenville, supra.

4. The Jackson authorities do not deny that the power of the City is utilized to enforce a policy of racial segregation in places of worship. Mayor Thompson's testimony is strikingly clear in this respect. The theory of appellees seems to be that state action to enforce a policy of segregation is permissible if the discrimination can be shown to originate with a non-state body. Even if it were accurate to assume that the discrimination originates here solel from the churches, and the record is quite clear that this is not so,*/ appellees totally misconceive the sweep of the Fourteenth Amendment.

Only this Term the Supreme Court has reminded us that "the crucial factor is the interplay of governmental and private action". Anderson v. Martin, #51, Oct. Term, 1963, decided Jan. 13, 1964. See also NAACP v. Alabama, 337 U.S. 449, 463. The implementation of private discrimination by state action is wholly violative of the Equal Protection Clause. Burton v. Wilmington Parking Authority, 363 U.S. 715; Shelley v. Kraemer, 334 U.S. 1; cf. Williams v. Howard Johnson's Inc., 323 F.2d 102. It is abundantly clear that state action in violation of the Fourteenth Amendment cannot excuse itself by framing the action as support or assistance to private discrimination. It is precisely this "interplay of governmental and

*/ See tesimony of Rev. Cunningham and Rev. Koons referred to supra, as well as affidavit of Rev. Granberry stating that decision of church results from "the pressures that are present in our social order."

private action" which the Amendment prohibits. Anderson v. Martin; Burton v. Wilmington; Shelley v. Kraemer, all supra. The City of Jackson can no more utilize its state power to enforce a policy of segregated churches than it could pass a law requiring that these churches remain segregated.

The City does not attempt to hide the "interplay" of governmental and private action. Mayor Thompson's position is totally predicated upon such an "interplay". Not only did he admit that he had had conferences with many Jackson ministers (including the pastors of two of the three churches involved in the criminal prosecutions) in his office at City Hall (T 138-139), but he candidly stated that he would use the power at his disposal to enforce segregation in the churches that "wished it".

> "I told them that anything the board wanted or anything the pastor wanted was what the city was going to do. In other words, if they wanted a Negro to come in that was the church, not only Galloway, but any other church. If they wanted a Negro kept out or if they wanted an undesirable person that was entirely up to who they wanted and the city was to cooperate just as in any other private concern." (T 141)

The Mayor then stated his position very directly:

> "Q So then if the church indicated to you or Reverend Granberry or Reverend Cunningham indicated to you that he wanted his church to be all white you would use any force in the city to keep it all white. Is that correct?
>
> "A I wouldn't use any force any how until we were requested.
>
> "Q That's what I am saying if he said to you Mayor Thompson we don't want Negroes in this church you would then use the Police Department or any other?
>
> "A When we were called upon. (T 141)

And so that there be no doubt at all about the City's continued involvement in enforcing a policy of racial segregation, the Mayor testified as follows:

> "Q Right. I just want to get this down exactly as you want it for the record. As I understand it in this discussion with Dr. Cunningham, the gist of it was that if he wanted to call upon you to aid him in any policy with keeping his church white and asked you to assist you would be prepared to assist as you had in the past?
>
> "A That's correct." (T 142)

The essence of the City of Jackson's position is that the implementation of private discrimination by open and extensive state action is somehow permissible. This runs squarely in the face of the plain words of the Fourteenth Amendment and the most explicit holdings of the Supreme Court. State action enforcing racial segregation is barred by the Constitution regardless of the source of the discrimination. The Constitution does not attempt to "separate the mental urges of the discriminators". Peterson v. City of Greenville, supra. Jackson may not throw the full weight of state power in support of any policy of racial segregation. Anderson v. Martin, Peterson v. City of Greenville, Lombard v. Louisiana, Burton v. Wilmington, Shelley v. Kraemer, all supra.

5. Appellees further argue that a church as a private institution may engage in racial segregation without regard for the Constitution of the United States. In the face of the massive state action enforcing segregation which this record reveals, this contention is, of course, wholly irrelevant. See Peterson v. City of

Greenville and cases cited supra. But in any event this argument is totally inapposite here.

In the first instance the record here fully indicates that the policy of racial segregation, actively and aggressively enforced by the City of Jackson, was neither the policy of the ministers of the local churches nor the national church bodies involved. Both Dr. Cunningham and Rev. Koons testified that they were not proponents of racial segregation (T. 157, 167) and Rev. Granberry, in his affidavit submitted on behalf of the appellees, made it amply clear that the conclusions of his church to adhere to segregation were the result "of the pressures that are present in our social order".

The record further indicates the uncontested fact that the unswerving policy of the national church denominations involved is to publicly welcome all persons as worshippers without regard to race or color. Thus, for example, the record here contains Dr. Cunningham's testimony as to the stated and unequivocal policy of the Methodist Church:

> "Q. And is this the national policy of the Methodist Church as you know it?
>
> "A. Yes.
>
> "Q. That all people are welcome regardless of race, creed or color?
>
> "A. Yes. That's no law, you understand.
>
> "Q. But it's the policy of the church, is it not?
>
> "A. Yes."
>
> (T. 157)

This forthright statement of Church policy is further reflected in the record in the Doctrines and Disciplines of the Methodist Church, referred to in the affidavit of Rev. James M. Reed. Thus the following sections provide:

> "107. All persons seeking to be saved from their sins and sincerely desiring to be Christian in faith and practice are proper candidates for membership in the Methodist Church. ...
>
> "2027 (4) That our pastors, upon whom rests the responsibility of receiving individuals into church membership discharge that responsibility without regard to race, color, or national origin."

And in interpreting its creed the Methodist Church further provides as follows:

> "2020E We stand for the equal rights of racial, cultural and religious groups and insist that the social, economic and spiritual principles set forth in this creed apply to all alike. The right to choose a home, enter a school, secure employment, vote, or join a church should not be limited by a person's race, culture or religion.
>
> "2026. Our Lord, Jesus Christ, teaches that all men are brothers. He permits no discrimination because of race, color or creed."

(See Reed affidavit and T. 37-39)

The record evidence of the open church policy of the Methodist Church is illustrative of the fundamental policies adhered to by every national Christian denomination. It reflects the most profound beliefs of all mankind -- that a house of worship is not an exclusive private club but a haven and a sanctuary for all children

of God. It reflects the universality of the concept of the brotherhood of man under the fatherhood of God. Every national American religious denomination extends to all members of the community an invitation to join its worship services. Every television program, every newspaper, encourages all Americans to attend the religious services of their choice. From the earliest days of Christianity a fundamental tenet has been the teaching, "Knock and it shall be opened unto you; seek and you shall find." In seeking to worship as brothers without the brand of racial segregation, these appellants were seeking to implement and act according to the finest and most noble traditions of the religious institutions they sought to enter.

* * * * * * * * * * * *

The threatened arrests and prosecutions of appellants and members of the classes they represent constitutes state action to impose and enforce a policy of racial segregation in clear defiance of the Equal Protection Clause of the Fourteenth Amendment. Peterson v. City of Greenville, Lombard v. Louisiana, United States v. City of Jackson, Bailey v. Patterson, all supra.

POINT II

THE ACTIONS OF THE APPELLEES VIOLATE THE FIRST AMENDMENT AS INCORPORATED INTO THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

1. The Actions of the Appellees Violate the Free Exercise of Religion Clause.

The physical barring of the appellants from a House of Worship by officers of the State solely because two of the appellants were members of the Negro race and their arrest and prosecution solely because of this attempt to worship, represent a flagrant and open interference with the free exercise of religion. The prohibition in the First Amendment against any interference with the free exercise of religion is equally binding upon the States under the Fourteenth Amendment. Abington School District v. Schempp, ____ U.S. ____, 83 S.Ct. 1560 (1963); Cantwell v. Connecticut, 310 U.S. 296. As the Court recently said in Schempp:

> "This court has decisively settled that the First Amendment's mandate that 'Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof' has been made wholly applicable to the states by the Fourteenth Amendment. In a series of cases since Cantwell the court has repeatedly reaffirmed that doctrine, and we do so now."

The action of the city policemen in arresting the appellants and the city and state officials in threatening to prosecute them is the clearest possible restraint upon their right to the free exercise of religion. As Mr. Justice Clark said last Term in Schempp:

"The Free Exercise Clause, likewise considered many times here, withdraws from legislative power, state and federal, the exertion of any restraint on the free exercise of religion."

The State of Mississippi may not by compulsion impose upon these appellants the requirement that public worship can only be engaged in through racially segregated means. This is the most overt form of state "restraint upon the free exercise of religion." Abington School District v. Schempp, supra.

It is clear from the testimony of Bette Poole that on the morning of October 6, 1963 she and her companions were interested in worshipping in an integrated fashion at the Capitol Street Methodist Church.

"Q. Now will you tell Your Honor why you were interested in worshipping at the Capitol Street Methodist Church?

"A. Well, as part of my religious belief I feel that a church shouldn't segregate or discriminate against any race, creed or color ... doesn't matter what race they are and the churches are open to all people.

"Q. And was that the reason you went to --

"A. (interrupting) That's the reason.

"Q. (continuing) church that Sunday?

"A. Yes."

(T. 4-5)

Ruth Moore, who was arrested at Trinity Lutheran Church on October 20, 1963, similarly stated that she had attempted to worship in an integrated fashion.

"Q. Now, Miss Moore, will you tell his Honor why you were attending church ...?

* * *

"A. We were attending church, at least we went to attend because I believe that there is one church and that's God's Church and if we are all Christians then we can worship together."

(T. 67)

John Garner, a member of Galloway Memorial Methodist Church, testified that he had taken a Negro girl and two white ministers with him to his church on October 20, 1963, because "I feel that if anybody wants to come and worship in my church this is wonderful and I would accept anyone who wanted. They wouldn't even need to be a Christian." (T. 48)

It is also equally clear from the testimony of both Miss Poole and Miss Moore that it was the police and not members of the churches concerned who instigated their arrests. According to Miss Poole, after the usher had told her that she was not welcome, the waiting police officer interrupted. "He said, you heard you are not welcome here, there are other Negro churches down the street for you to worship and he said I am giving you two and a half minutes to leave, and uh we asked the we asked the usher if he would like to have one of our pamphlets that we had, it was a letter from the Birmingham jail by Reverend Martin Luther King. As the usher said, as the usher was fixing to say no the policeman said no we don't want none of that so he grabbed me by the arm and at this point I said don't push me and uh the policeman said well why don't you go to another church and then we uh we asked the usher again why we couldn't worship and the usher said that you aren't that you aren't

welcome so we turned to leave and just as we fixing to step down off the curb the policeman called us back and told us that we were under arrest." (T.4)

> "Q. And were you then taken into custody at that moment?
>
> "A. Yes, he called the two policemen across the street to come get us."
>
> (T. 4)

The "policemen across the street" had followed Miss Poole and her companions to the church (T. 3) and the arrests took place on the sidewalk near the bottom of the steps leading to the church. (T.4)

As has already been fully pointed out, there is not a shred of evidence in the record to indicate that any official or member of the churches concerned asked for the arrests of any of the appellants or members of the classes which they represent. To the contrary, both Dr. Cunningham and Rev. Koons stated affirmatively that not only had they not asked for police interference, but that they had no objection to appellants worshipping in their churches. It is patently clear that the City of Jackson, through its police, was determined to prevent appellants from worshipping at the churches of their choice. A clearer example of a violation of the Free Exercise Clause cannot be imagined.

2. The Actions of the Appellees Violate the First Amendment Guarantees of Assembly and the Right to Petition.

In addition, the arrests and threatened prosecutions of the appellants violate their rights to peaceful assembly and to

petition for the redress of grievances. Appellants' peaceful conduct reflects a classic example of exercise of the "pristine" rights of the First Amendment. Edwards v. South Carolina, _____U.S. ____, 83 S. Ct. 680. The peaceful exercise of First Amendment rights may not be punished by state action. Edwards v. South Carolina, supra, Wright v. Georgia, _____U.S. _____, 83 S.Ct.1240; such punishment is a deterrent to all citizens to exercise First Amendment liberties and will not be tolerated by the Federal Courts. CORE v. Douglas, 318 F.2d 95 (CA 5, 1963); NAACP v. Button, _____U.S. _____, 83 S.Ct. 328 (1963).

It is of course obvious that in addition to exercising their undisputed right to the free exercise of their religion, appellants were protesting the existence of segregation in a House of God. In the most classic manner, they were assembling peacefully to signify this protest and to petition for the redress of a legitimate grievance. Bette Poole put it most eloquently when she stated below that "Ifeel that a church shouldn't segregate or discriminate against any race ... the churches are open to all people." (T. 5)

There is no doubt that in every arrest situation here involved appellants and members of their classes were peaceful and orderly. There is no evidence in the record to the contrary other than Deputy Chief Ray's testimony that Reverend Forshey was talking "very loud and in an argumentative mood". (T. 175) Parenthetically, it was noted at the hearing below that Reverend Forshey normally speaks in a loud tone of voice. (T. 36)

The nature of appellants' protest was given concrete form by the fact that on October 6, 1963, Miss Poole and her companions attempted to give a copy of Dr. Martin Luther King's celebrated "Letter from the Birmingham Jail" to the usher of the Capitol Street Methodist Church. (T. 4) Two weeks later, at the same church Reverend Forshey protested to the usher that Christ invited all worshippers to His Church. (T. 26) In fact, Reverend Forshey, according to Deputy Chief Ray, wanted a message of this nature relayed to the church's pastor. (T. 176)

There is not the remotest shadow of a doubt that appellants were being prevented by the police of the City of Jackson from communicating their protest to the pastors and parishioners of the various churches concerned as well as from assembling in order to so communicate. Deputy Chief Ray put it best when he said, "... he began to holler out something about he had a message for Brother Granberry, that's Reverend Forshey, and he wanted them to relay this note that he had to him and they told him that they would do that and after about two or three saying they wouldn't he hollered would anybody get this message to him in a loud tone of voice and I told him to follow me, that he was under arrest ..." (T. 176)

The actions of the Jackson authorities was clearly designed to and did, in fact, violate the most fundamental guarantees of speech and assembly contained in the First Amendment.

POINT III

THE ARRESTS AND/OR CONVICTIONS OF APPELLANTS PURSUANT TO SECTIONS 2090 AND 2406 MISSISSIPPI CODE OF 1942 (AS AMENDED) DENY DUE PROCESS OF LAW

The testimony below, even if taken most favorably to the state, show nothing more than peaceful and orderly attempts to worship at Jackson churches by Christians of the Caucasian and Negro races. These arrests and/or convictions either offend the due process clause under the doctrine of Thompson v. Louisville, 362 U.S. 199, and Garner v. Louisiana, 368 U.S. 157, or else the law has been so unfairly expanded by construction that it fails to warn, violating the principles of Lanzetta v. New Jersey, 306 U.S. 451; Cantwell v. Connecticut, 310 U.S. 296; Edwards v. South Carolina, 372 U.S. 229; and other similar cases.

The statutes concerned read as follows:

"Section 2090. DISTURBANCE OF WORSHIP -- PROCEEDINGS AND PENALTY.

"If any person shall wilfully disturb any congregation of persons lawfully assembled for religious worship, he may be immediately arrested by any officer or private person, without warrant, and taken before any justice of the peace of the county, present or convenient, and on conviction thereof by such justice or in the circuit court, shall be fined not more than five hundred dollars or imprisoned not more than six months, or both."

"Section 2406. TRESPASS--WILFUL OR MALICIOUS, PUNISHED.

"Any person who shall be guilty of a wilful or malicious trespass upon the real or personal

property of another, for which no other penalty is prescribed, shall, upon conviction, be fined not exceeding five hundred dollars, or imprisoned not longer than six months in the county jail, or both."

According to Bette Poole, she and her companions arrived at the church steps on October 6, 1963. When they explained to the usher that they wished to worship, they were told by a policeman to go to a "Nigger church". "...so we turned to leave and just as we fixing to step down off the curb the policeman called us back and told us that we were under arrest." (T. 3-4) There is not a scintilla of evidence of either the disturbing of divine worship (or even that divine worship was in progress) or of any trespass on church property.

Two weeks later, when Reverend Forshey and his friends arrived at the same church, they were met at the steps by one of the ushers who proceeded to read a statement that Negroes were not allowed. (T. 26) The court below, obviously as bewildered as Reverend Forshey as to exactly what crime, if any, he had committed, interrupted counsel and questioned the minister himself.

"Q. The thing I don't understand, Reverend Forshey, you say that the usher, Mr. Head, read some kind of a statement to you?

"A. Yes.

"Q. And the statement was to the effect that the Negroes weren't welcome?

"A. Right.

"Q. But that you were welcome?

"A. Yes, that's right.

"Q. Well then, what were you accused of then if you were welcome and you were doing something that you were welcome to do?

"A. I would like to know, Judge, and if you would clarify that for me, I would be happy, too. I really don't know. I really don't understand why I am in jail, but I have been for the last 26 or 27 hours. I mean I just don't believe the charge is there ... " (T. 38)

When John Garner was arrested at his own church, Galloway Memorial, at 9:30 on the morning of October 20, 1963, he, too, had no idea why he was taken into custody.

"Q. What were you doing to cause the policeman to say that you were charged with breaching the peace?

"A. This is Greek to me, sir. To the best of my knowledge, no one raised their voice, there wasn't a harsh word spoken. ... I am not sure, you know the legal terminology, what you exactly mean by breach of the peace, so whether there was noise or disturbance to the best of my knowledge, there was not." (T. 47-48)

J. D. Griffith, the arresting officer at Galloway that morning, testified simply that he went to the church basement, heard a white male ordering three white males and a colored female to leave. All that the latter did, according to Officer Griffith, was to refuse to leave the building. The policemen then arrested the three white males and the colored female even though one of the males was a member of the church and had invited the others to visit with him. (T. 188-189)

It is also significant that Officer Griffith was told later at police headquarters what the charges were to be.

"Q. Did anyone tell you what charges to sign against them?

"A. Yes, sir, I was told after we got to headquarters the charge would be trespassing and disturbing divine worship. (T. 190-191)

His informant, Deputy Chief Ray, had not even been present at the arrests. (T. 191)

Griffith "assumed" that services were being conducted "because several people had gone inside the church." (T. 191) He made no attempt to determine whether services were being conducted or not and did not know what time they were scheduled for. (T. 191) Parenthetically, there is nothing in the record below to indicate that services were being conducted at any of the churches concerned or that they were disturbed in any way. In fact, the arrests at Galloway occurred at 9:30 a.m., long before the normal eleven o'clock service.

In short, there wasn't the slightest evidence of the conduct proscribed by the two statutes involved. Without evidence of guilt, the statutes are being used, as the City of Jackson has traditionally used otherwise innocent-appearing statutes, to punish people who are asserting their First and Fourteenth Amendment rights in a perfectly proper, lawful and peaceful manner.

The "Jackson Method" of dealing with "mixers" was made famous during the Freedom Rides of 1961 when almost four hundred people were convicted of breach of the peace for insisting, in a peaceful and orderly manner, on integrated travel facilities. It is

precisely this "method" that Commissioner Luckey refers to in his letter of August 22, 1963, to his fellow parishioners at Trinity Lutheran Church. "They will be charged with 'Breach of the Peace', and dealt with according to law," he wrote. "The City of Jackson has used this approach for a number of years and the lawyers of the NAACP have tested it in every court in the land including the Supreme Court of the United States and we have not had a vote against it."

The Commissioner was apparently unaware of this Court's opinion in Bailey v. Patterson, 323 F.2d 201 and in United States v. City of Jackson, 318 F.2d 1. In both cases, many of the same defendants present here were enjoined from arresting or otherwise harassing persons in the exercise of their federally protected rights The "Jackson Method" should not be any more vital where houses of worship are concerned than it is in bus terminals.

Nothing could be clearer that the threatened arrests and prosecutions violate the Due Process Clause of the Fourteenth Amendment. Louisville v. Thompson; Garner v. Louisiana; Edwards v. South Carolina, all supra.

POINT IV

THE DISTRICT COURT HAS POWER TO ENJOIN THE THREATENED PROSECUTIONS OF APPELLANTS AND THE MEMBERS OF THEIR CLASSES

1. Jurisdiction is Properly Invoked

A. The Court has jurisdiction to entertain this suit.

Jurisdiction is properly invoked under the Civil Rights Act and the Constitution of the United States. See for example: Douglas v. City of Jeannette, 319 U.S. 157; Bell v. Hood, 327 U.S. 678; Beck v. Perkins, 139 U.S. 628; Hague v. Committee for Industrial Organization, 307 U.S. 496; Bailey v. Patterson, (Sept. 1963, CA 5); Jordan v. Hutcheson (Sept. 1963, CA 4); Aelony v. Pace, Harris v. Pace, (Middle District of Georgia, Nov. 1, 1963, 3-Judge Court), Daniel v. Davis, 320 F. Supp. 601, D.C. La. (1963).

2. The Court Has Power to Enjoin the Enforcement of Unconstitutionally Applied State Statutes.

A. It is now beyond any question that it is settled law in this Circuit that a federal district court has power to enjoin the enforcement of unconstitutionally applied state statutes where enforcement threatens immediate and irreparable injury to fundamental constitutional rights. Aelony v. Pace, Harris v. Pace, supra, (see opinion and order entered by Chief Judge Tuttle and District Judge Morgan on November 1, 1963, granting a temporary injunction prohibiting state criminal prosecutions); Bailey v. Patterson, (CA 5, 1963),

(see opinion of Hays, C.J., joined in by Wisdom, C.J.); United States v. Wood, 295 F.2d 772 (CA 5, 1961) (see opinion of Judge Rives); City of Houston v. Dobbs Co., 232 F.2d 428 (CA 5); Denton v. City of Carrollton, 235 F.2d 95 (CA 5); Bush v. Orleans Parish, 194 F. Supp. 182 (E.D.La.); Browder v. Gayle, 142 F.Supp. 707, aff'd. 352 U.S. 903; Louisiana ex rel Gremillion v. NAACP, 181 F. Supp. 37, aff'd 366 U.S. 293; Morrison v. Davis, 252 F. 2d 102 (CA 5). See also full discussion in Jordan v. Hutcheson, (CA 4, Sept. 1963), and Moore, Commentary on Judicial Code, pp. 408,9. See also, AFofL v. Watson, 327 U.S. 582; Truax v. Reich, 239 U.S. 33; Pierce v. Society of Sisters, 268 U.S. 510; Terrace v. Thompson, 263 U.S. 197; Hague v. CIO, 307 U.S. 496; Hynes v. Grimes Packing Co., 337 U.S. 86; Cline v. Frink Dairy Co., 274 U.S.445. See authorities cited in Hale v. Bimco Trading Co., 306 U.S. 375.

B. Title 28 U.S.C., Section 2283 is no bar to the relief here sought.

(1) Section 2283 does not apply to the present request for equitable relief since twenty-five out of the twenty-eight state court proceedings were not commenced until after the institution of the within action.

It is well established that §2283 is inapplicable where state court proceedings have not been commenced. Ex parte Young, 209 U.S. 123 (1908); Truax v. Reich, 239 U.S. 33 (1915); Looney v. Eastern Texas R.R., 247 U.S. 214 (1918); American Houses v. Schneider, 211 F. 2d 881 (3rd Cir. 1954); Hart & Wechsler, The Federal Courts

and the Federal System 347 (1953; Note, Enjoining State Court Proceedings 74 Harv. L. Rv. 726, 729 (1961).

In the leading case of Ex parte Young, 209 U.S. 123 (1908), the Court in upholding a federal court injunction of a threatened state criminal prosecution pursuant to a statute challenged as unconstitutional, stated (209 U.S., at pp. 161-62):

> "It is further objected (and the objection really forms part of the contention that the State cannot be sued) that a court of equity has no jurisdiction to enjoin criminal proceedings, by indictment or otherwise, under the State law. This, as a general rule is true. But there are exceptions. When such indictment or proceeding is brought to enforce an alleged unconstitutional statute, which is the subject matter of inquiry in a suit already pending in the Federal court, the latter court having first obtained jurisdiction over the subject has the right, in both civil and criminal cases, to hold and maintain such jurisdiction, to the exclusion of all other courts, until its duty is fully performed ..."

Only three out of the pending twenty-eight state court proceedings were commenced against appellants in the case at bar before the institution of this action. It has been held that a state criminal proceeding, for the purposes of §2283, does not commence until after the prosecutor has laid the indictment before the grand jury. Fenner v. Boykin, 3 F.2d 674 (N.D. Ga. 1925), aff'd 271 U.S. 240 (1926).

In that case the District Court, holding that the predecessor of §2283 did not bar an injunction against a threatened criminal prosecution stated (at p. 676):

> "Judicial Code, §265, does not prohibit the inquiry. Neither the grand jury nor the court of which it is a part will ever be enjoined ... Nothing will prevent their action save a regard for the harmony of the ju-

diciary. Though the injunction of solicitor and sheriff would be a substantial injunction of the prosecution, it is not prevented by section 265 because of the well-recognized exception whereby the federal court may thus protect the jurisdiction first acquired by it. The investigation entered upon by the grand jury was not a prosecution. When this bill was filed no indictment had been prepared by the Solicitor General and laid before the grand jury. This court may prevent his making one since the filing of this bill, or prosecuting one since found, until it shall have fully exhausted its jurisdiction in the premises."

See also Moore, Commentary on Judicial Code, p. 408.

"Nor does 2283 prevent the federal courts from enjoining the institution (sic) in the state courts of proceedings to enforce local statutes or administrative orders which are repugnant to the Constitution of the United States, and after the federal jurisdiction has been invoked, from protecting that jurisdiction by enjoining interfering state court proceedings subsequently instituted."

(2) Section 2283 does not apply to injunctions against state proceedings where such injunctive relief has been expressly authorized by an Act of Congress. The relief here sought is expressly authorized by the Civil Rights Statutes, Title 42 U.S.C. 1981, 1983, 1985. The Civil Rights Act, and in particular Section 1983, specifically authorizes equitable relief of the nature here sought. Aelony v. Pace, Harris v. Pace, supra; Morrison v. Davis, 5 Cir., supra; Browder v. Gayle, supra.

This Court has held directly that 42 U.S.C.A. 1983 expressly creates a cause of action for injunctive relief of the nature here sought thus coming within the specific statutory exemption in Section 2283. Morrison v. Davis, 5th Cir., supra.

As the Court said in Morrison:

> "This is not such a case as requires the withholding of federal court action for reason of comity, since for the protection of civil rights of the kind asserted Congress has created a separate and distinct federal cause of action, 42 USCA 1983."
>
> (emphasis added)

It is of course not necessary that any "prescribed formula" be followed in the "express authorization" as required by 2283. "An authorization need not expressly refer to 2283", Amalgamated Clothing Workers v. Richmond, 348 U.S. 511. The authorization for equitable relief of the type here sought is clearly contained in the Civil Rights Statutes.

Moreover the holding of this Court in Wood v. United States, supra, also supports this conclusion. In Wood the Court held that 42 U.S.C. 1971 was a statute expressly authorizing injunctive relief against state criminal court proceedings and thus fell squarely within the stated exception to 2283. 42 U.S.C. 1971 is no different in fundamental substance from 42 U.S.C. 1983 and 1985 upon which the present actions rest. It is amply clear that new 1971, a recent amendment to the Civil Rights Act, is merely a detailed procedural addition to the substance of old 1971 authorizing the United States to protect procedurally the rights previously granted to private persons. United States v. Raines, 362 U.S. 17. Under the holding of Wood, 1983, like 1971, is a statute expressly authorizing the equitable relief here sought, and thus falls within the statutory exception to 2283.

In Cooper v. Hutchinson, 184 F.2d 119 (3rd Cir. 1950) it was explicitly held that 42 U.S.C. §1983 authorized an injunction of state court proceedings and came within the exception to §2283. In that case, injunctive relief was sought under the Civil Rights Act to prohibit further proceedings in a capital case before a New Jersey trial judge unless certain out-of-state lawyers were permitted to act as counsel for the defendants. The Court of Appeals held that §2283 did not prevent the granting of an injunction against the trial judge, saying (at 121):

> "...[T]he provision in the Judicial Code forbidding the use of the injunction against state action has a stated exception when a Federal statute allows it, as it does here."

The Court, in reaching this conclusion, reasoned that:

> "The Civil Rights Act provision relied upon here expressly provides for a 'suit in equity' by the aggrieved party." ibid.

See also Tribune Review Publishing Co. v. Thomas, 153 F. Supp. 486 (W.D. Pa. 1957).

Since the Court's decision in the Hutchinson case, Congress has enacted both 42 U.S.C. §1971 and subdivision (4) of 28 U.S.C. §1343. Both of these sections provided expressly for Federal equitable relief and therefore resolve any doubt as to whether there is express statutory authority to enjoin a state court proceeding under the circumstances present here.

C. There is clear equitable jurisdiction to restrain the enforcement of these state criminal statutes.

In addition to the most recent precedents in this Circuit, see Aelony v. Pace, supra, and Bailey v. Patterson, supra, the

Court of Appeals has carefully construed the often cited holding of the Supreme Court in Douglas v. City of Jeannette, 319 U.S. 157.

This Court has discussed the impact of the Jeannette doctrine upon situations identical to the present appeals. See Denton v. City of Carrollton, Georgia, 235 F. 2d 481 (CA 5, 1956). In this case a federal suit was brought for a declaratory judgment and injunctive relief against the enforcement of a city ordinance claimed to be unconstitutional under the Fourteenth Amendment. The District Court declined to exercise jurisdiction or to issue the relief sought relying upon Douglas v. Jeannette. This Court reversed, holding:

> "But this wholesome rule [Douglas v. Jeannette] envisages itself the necessity under circumstances of genuine and irretrievable damage, for affording equitable relief even though the result is to forbid criminal prosecution or other legal proceedings."

The Court reversed the denial of injunctive relief stating:

> "There was therefore a substantial basis for equitable relief. AFL v. Watson, supra; Hynes v. Grimes Packing Co., 337 U.S. 86; Shields v. Utah, 305 U.S. 177."

This Court followed the same approach in City of Houston v. Dobbs Co., 232 F. 2d 428 (CA 5, 1956). In an opinion by Judge Tuttle, the Court affirmed the granting of permanent injunctive relief against the enforcement of a criminal ordinance of the City of Houston. The Court held:

> "Appellant attacks the jurisdiction of the Court on the well recognized principle that courts will not normally enjoin the enforcement of criminal statutes or ordinances whose constitutionality is challenged. There is an equally well recognized exception to this rule as stated in the case cited

by the appellant in its brief, Spielman Motor Sales Co. v. Dodge, 295 U.S. 89 where the Court says, 'to justify such interference there must be exceptional circumstances and a clear showing that an injunction is necessary to afford adequate protection of constitutional rights. The case before us presents a clear illustration of such exceptional circumstances as would make the general rule inapplicable."

And even in those cases where the courts have declined to exercise equity jurisdiction the clear power of the federal courts to enjoin state criminal proceedings upon a showing of irreparable injury to constitutional rights has always been reaffirmed. Cf. Wilson v. Schnettler, 365 U.S. 381 (1961); AFof L. v. Watson, 327 U.S. 582; Stefannelli v. Minard, 342 U.S. 117.

This traditional ability of a court of equity to prevent immediate and irreparable injury is particularly required in the protection of fundamental civil and personal rights. Only recently we have been reminded that these rights, and in particular, those guaranteed by the Fourteenth Amendment, are "present rights", Watson v. City of Memphis, _____U.S. ____83 S. Ct. 1314 (May 27, 1963). Mr. Justice Goldberg emphasized that these "present rights ... are not merely hopes to some future enjoyment of some formalistic constitutional promise. The basic guarantees of our Constitution are warrants for the here and now and, unless there is an overwhelming compelling reason, they are to be promptly fulfilled." (p. 1318)

When the fundamental rights of free exercise of religion, assembly, petition, speech, are interfered with, these "present rights" are irretrievably lost. Equity jurisdiction alone is avail-

able to guarantee that these "present rights" do not become "merely hopes to some future enjoyment of some formalistic constitutional promise." Watson v. City of Memphis, supra. These rights must be "promptly fulfilled". The loss of fundamental rights is perhaps the most serious and irreparable injury which our system of government could contemplate. The federal courts will not hesitate to properly apply the powers of the equity side to guarantee that these rights are "promptly fulfilled". Under the rule of Jeannette a threat to the "present right" of assembly, speech, and petition, particularly within the context of an effort to enforce the Equal Protection Clause, is the "immediate and irreparable injury" necessary to invoke the equity power.

In the words of Judge Tuttle in City of Houston, supra, the "case before us presents a clear illustration of such exceptional circumstances as would make the general rule inapplicable." As in Wood the irreparable injury which will be suffered unless the equitable powers of the federal courts are available is of the most serious character.

This Court recently had the occasion to face this problem once again in a strikingly analogous situation. In Bush v. Orleans Parish School Board, 194 F. Supp. 182 (D. Ct. E.D. La. 1961), Judge Rives, sitting on a three-judge court, met directly the question of enjoining state court criminal proceedings and statutes. Louisiana had enacted a series of criminal laws designed in their operation, but not on their face, to deter Negro citizens from exercising their right to insist upon the desegregation of public education. The

Attorney General of the State argued that 2283 and the policy of comity prohibited the federal court from enjoining these criminal prosecutions. Judge Rives replied sharply to this assertion:

> "True, 'it is a familiar rule that courts of equity do not ordinarily restrain criminal prosecution' Douglas v. Jeannette... But this rule cannot be applied mechanically. NAACP v. Bennett, cf. Doud v. Hodge, 350 U.S. 485. Special circumstances will sometimes compel a federal court to act. Truax v. Reich 239 U.S. 33; Pierce v. Society, 268 U.S. 510; Hague v. CIO, 307 U.S. 496.... This is such a case."

D. The appellants have clear standing to bring this action.

Appellants and twenty-five members of the classes which they represent have been arrested and charged with crimes for which they face as much as a year in jail and a fine of $1000.00. In fact, appellants themselves have been sentenced to such jail sentence and fine, following their plea of nolo contendere on October 7, 1963, when they were unable to obtain an attorney to defend them. Not only must they, like their twenty-two fellow defendants, face trials for the arrests of October 20, et seq., but they must also face a trial de novo in Hinds County Court for the arrests of October 6, 1963.

All other members of their classes who wish to assert their fundamental constitutional guarantees by attending church on an integrated basis are threatened with immediate arrest and prosecution under the statutes involved herein. Their standing to sue for injunctive relief is apparent. Bailey v. Patterson, supra. As this Court there held, "The law is crystal clear that they were not required to subject themselves to arrest in order to maintain this

suit. Evans v. Dwyer, 368 U.S. 702; Morrison v. Davis, 252 F. 2d 102 (5th Cir.), cert. denied, 356 U.S. 968 (1955); Baldwin v. Morgan, 231 F. 2d 780, 787 (5th Cir. 1958)."

E. This is not a proper case for application of the doctrine of abstention.

The Supreme Court's decision in McNeese v. Board of Education, 373 U.S. 668, finally disposes of the application of this doctrine to the circumstance of the case at bar. The Court said: "Relief under the Civil Rights Act may not be defeated because relief was not first sought under state law which provided a remedy." See also, Jordan v. Hutcheson, (CA 4, Sept. 1963), supra; United States v. City of Jackson, (CA 5), supra.

The most significant attribute of our American system is the protection it affords the individual against state or national curtailment of fundamental constitutional rights. In this connection, this Court and all federal courts bear the responsibility for protecting these rights against wrongful state action. Without the assumption of such responsibility by federal courts, which are its natural exercisers, the balance that is so essential to our federal system is itself in grave danger.

Here, appellants and their classes have been arrested and/or prosecuted, or threatened with both, for exercising one or more of the most fundamental of their constitutional rights. They have offered proof which shows that, as to them, the two statutes involved have

been applied, not for the achievement of any valid statutory purpose, but because they have offended against Mississippi's "steel-hard" policy of racial segregation.

It is obvious from the record herein that the arrests and/or prosecutions under the statutes involved were designed, not to carry out their constitutionally valid purposes, but to enforce the constitutionally invalid state policy of segregation. Because they cannot accomplish this directly, appellees are attempting to do so indirectly.

The irreparable harm suffered by appellants and their classes can best be demonstrated by the affidavit of Rev. Edwin Ralph King, a native Mississippian who has resided in the Jackson area for some years. Reverend King, a Methodist minister and the chaplain of Tougaloo College, is thoroughly familiar with the subject matter of his affidavit which was offered in evidence at the hearing below.

The applicable portion of his affidavit reads as follows:

> "In my capacity as chaplain of Tougaloo College I talk with many students and others about their church life. I have become aware of a situation which now exists in the City of Jackson, Hinds County, Mississippi. Because of what seems to be administrative policy, freedom of worship and the freedom to attend the church of your choice is being denied in Jackson by police action. Students, faculty members, and citizens of Jackson (Negro, white, and orientals) have spoken to me about their fears when going to church. They fear being insulted, being cursed, being beaten, and being jailed by Jackson policemen or by county officers. People, including myself, are afraid to even drive an automobile in the City of Jackson and parts of Hinds County on Sundays. Frequently police cars or others will follow a person several miles across the city on his way to church. Police often stop a car for no real reason. In the neighborhood of many churches police are often in evidence -- and do not seem to be there for

traffic purposes. The "paddy wagon" cruises around town near churches. Jackson's famous police dogs have been seen in the back of police cars driven near churches. Armed men (perhaps constables or deputy sheriffs) as well as uniformed police have been standing near churches. All this was intimidation enough but now police are arresting persons who seek to attend churches to join in Christian worship and to witness to the brotherhood of all Christians in the unity of the Body of Christ. Police have cursed persons in front of churches and even threatened to beat women at churches, I have been told. Those persons arrested have been held on very high bail and given heavy fines and long prison terms. People have been arrested inside church buildings--even local church members are being jailed. Because of these official police actions many persons are deterred in their desire to worship in a Christian church. By fear, harassment and arrests, the city, county and state governments are denying our freedom of worship and other rights.

"Although Methodist ministers have assured me that they do not want anyone arrested at their church and that no church officials have asked for police action, the police have taken over and make arrests despite the wishes of the clergy and local church officials. I, myself, a Methodist minister, have been deterred from visiting Methodist churches because of fears of police action and arrests."

This is a segregation case -- nothing more or less. This Court, and this Court alone, stands in the way of the City of Jackson's plans to keep its churches, as it has for generations kept its bus terminals, its lunchrooms, its restrooms, its schools, its libraries, its auditoria, its hotels, its theatres, its hospitals and even its bloodbanks, completely and irrevocably segregated. Abstention would make this Court a partner in such a scheme of racial discrimination.

But this Court has not sought to avoid its responsibilities. Again and again it has signified its intention to stand between the Negro citizen and those states -- like Mississippi -- which seek to compress him into a black world of inferiority and inequality.

Bailey v. Patterson, United States v. City of Jackson, both supra. This case is just another rung of the same ladder and it is now necessary once more to tell the State of Mississippi and the City of Jackson that state power cannot be used to keep any area of life racially segregated. The Constitution prohibits a state from using its power to keep eleven o'clock Sunday morning as "the most segregated hour in America".

* * * * *

The equitable relief granted by the Federal Courts of this Circuit in such recent cases as Aelony v. Pace, Bailey v. Patterson, Wood v. United States, Morrison v. Davis, and other cases, all supra, reflects deep understanding that the national system of dual sovereignties exists only within the context of federal supremacy. That is why the normal rules of comity must give way when fundamental constitutional rights such as those asserted by these plaintiffs are threatened by state criminal proceedings or statutes. Where state court criminal proceedings or statutes are utilized in whole or in part to deter Negro and white citizens from exercising basic rights guaranteed to them under the Fourteenth Amendment in their efforts to achieve the liberty and equality which that Amendment promises, the Federal Courts in providing immediate injunctive relief are upholding the essence of federalism under the Constitution.

POINT V

PROPOSED FORM OF RELIEF

At the hearing on January 16, 1964 before this Court on appellants' application for a stay of prosecutions pending appeals, counsel was requested to include in the brief on appeal a discussion of the form of appropriate relief.

The question stripped of all surplusage, boils down simply to the following: what type of relief will adequately protect appellants and members of their classes from the type of state action which, in its most obvious form, has been used to further the policy of segregation that this Court has itself labeled "steel-hard, inflexible, undeviating". United States v. City of Jackson, supra, at p. 5.

What we are confronted with here, of course, is just a back-door method of enforcing the state policy of segregation so blatantly expounded in Section 4065.3 of the Code of Mississippi. As this Court stated in United States v. City of Jackson, "...one of the sophisticated methods for circumventing the law is for local police to eschew 'segregation' laws, using in their place conventional breach of peace or trespass laws as instruments for enforcing segregation..." (supra at p. 6-7).

In this context, appellants suggest that this Court direct the District Court to issue a temporary injunction incorporating the following provisions:

(a) Restraining the enforcement, operation or execution

of Sections 2090 and 2406 of the Code of Mississippi insofar as they are applied to punish appellants or members of their classes for peacefully attending or attempting to attend houses of worship in the City of Jackson, Mississippi at times and places when and where white members of the public are normally welcome;

(b) Restraining the enforcement, operation or execution of any other statutes, ordinances or laws of the State of Mississippi and/or the City of Jackson or the County of Hinds insofar as they are applied to punish appellants or members of their classes for peacefully attending or attempting to attend houses of worship in the City of Jackson, Mississippi at times and places when and where white members of the public are normally welcome;

(c) Restraining appellees, their agents, attorneys and all others acting in concert with them from impeding, interfering with or deterring appellants and members of their classes from exercising their right to the free exercise of religion without discrimination because of race or color, in places of public worship;

(d) Restraining appellees, their agents, attorneys and all others acting in concert with them, pending the hearing and determination of the prayer for permanent relief, from prosecuting and/or imprisoning appellants or members of their classes, by virtue of charges under the aforesaid Sections 2090 and 2406 of the Code of Mississippi, which charges are presently pending in the Municipal Court of Jackson, Mississippi and/or the County Court of Hinds County, Mississippi;

(e) Restraining appellees, their agents, attorneys and all others acting in concert with them from arresting appellants or members of their classes for peacefully attending or attempting to attend houses of worship in the City of Jackson, Mississippi at times and places when and where white members of the public are normally welcome

(f) Restraining appellees, their agents, attorneys and all others acting in concert with them from stationing police or other officers at houses of public worship for purposes in any way related to the maintenance of segregation therein or to the prevention or deterrence of appellants or members of their classes from peacefully attending or attempting to attend houses of worship in the City of Jackson, Mississippi at times and places when and where white members of the public are normally welcome;

(g) Restraining appellees, their agents, attorneys and all others acting in concert with them from directing or instructing appellants or members of their classes to attend racially segregated houses of worship;

(h) Restraining appellees, their agents, attorneys and all others acting in concert with them from following or otherwise harassing or from assigning police or other officers to follow or otherwise harass appellants or members of their classes who are peacefully attending or attempting to attend houses of worship in the City of Jackson, Mississippi at times and places when and where white members of the public are normally welcome;

(i) Restraining appellees, their agents, attorneys and all

others acting in concert with them from in any way or manner seeking to enforce or encourage racial segregation in any house of worship within the City of Jackson, Mississippi;

(j) Restraining appellees, their agents, attorneys and all others acting in concert with them from continuing to arrest, harass, intimidate, threaten or coerce appellants or members of their classes in the exercise of their federally protected right to the free exercise of their religion.

The proposed form of relief is based on the injunctive relief authorized by this Court in Bailey v. Patterson, and United States v. City of Jackson, both supra, as molded to the necessity of the record below.

CONCLUSION

The case here presented raises fundamental issues of federal and constitutional law. It would serve no purpose to restate them in conclusion. But out of the record below, certain basic considerations emerge which may be appropriate here to mention.

We have been recently reminded by this Court that "A Court, as Chief Justice Taft stated, would be blind not to see what 'all others can see and understand'." State of Alabama v. United States, 304 F.2d 583 (1962). Increasingly, the "Jackson Method" has emerged clearer and clearer for all to "see and understand". United States v. City of Jackson, supra. See also, Lusky, Racial Discrimination and the Federal Law: a Problem in Nullification, 63 Col. L. Rev. 1163 (November, 1963)

By the bringing of groundless charges that would ultimately be reversed by the United States Supreme Court on due process grounds the City of Jackson has fought bitterly to maintain its totally segregated status. Whether it involves citizens desiring non-segregated transportation facilities or non-segregated religious services, the approach has been exactly the same. By extensive use of breach of the peace and related statutes, Jackson has tried to make the price tag for the assertion of constitutional rights so high that few will be able to afford it. See Lusky, supra, at P. 1180.

Uniformly, the city's officials have on many occasions in the past stubbornly maintained that their sole concern has been

the vindication of civil peace. Judge Wisdom, in this Court, had occasion recently to respond to this assertion by the same officials:

> "This disingenuous quibble must rest on the assumption that federal judges are more naive than ordinary men. Perhaps they are. Holmes thought so. But in the sector of the law encompassed in the subject 'Civil Rights' case by case federal courts have acquired a thorough education in 'Sophisticated Circumvention'."

United States v. City of Jackson, supra.

Appellants have turned to the only judicial arena open to them for redress. The Federal Constitution alone stands as a barrier to the wholesale disregard for the fundamental liberties of a free people that has characterized the "Jackson Method". And this Court sits as the guardian of that Constitution. It alone can blunt the "steel-hard, inflexible, undeviating official policy of segregation" that has made the Fourteenth Amendment and the finest traditions of this country a mockery from Meridian to Vicksburg and from Clarksdale to Biloxi.

Appellants respectfully submit that all orders appealed from must be reversed and the relief prayed for granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that copies of the above and foregoing brief have been served on the attorneys for the appellees by the United States mail, postage paid, this 27th day of January, 1964.

_____
Arthur Kinoy
One of the Attorneys for
Appellants

Flower Garden Quilt

LCDC

United States District Court

FOR THE NORTHERN DISTRICT OF MISSISSIPPI

WESTERN DIVISION

Civil Action No. WC 676

LACKEY ROWE, JR.,

Petitioner,

—v.—

THE STATE OF MISSISSIPPI, *et al.*,

Respondents.

BRIEF ON BEHALF OF THE LAWYERS CONSTITUTIONAL DEFENSE COMMITTEE OF THE AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

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May it please the Court:

The Constitution and laws of the United States guarantee Negroes against official discrimination on account of their race. That Constitution and those laws also provide legal immunity to all persons, whether white or Negro, against official reprisal for lawful action taken in claiming the benefit of the guarantee against racial discrimination. The legal rights which implement that guarantee and its attendant immunity are collectively denominated "civil rights."

It is the duty of the courts to protect civil rights. It is the professional obligation of lawyers to represent persons seeking judicial protection of their civil rights, and to assist the courts in affording that protection.

A legal right is an empty thing if no lawyer can be found who will assist in claiming it. Such a right (if indeed it can be called a right) is worse than no right at all. It is a glittering mirage, a wellspring of disillusioned bitterness. It teaches that justice is to be sought elsewhere than in the orderly processes of the law.

Interest of the *Amicus Curiae*

It is an unfortunate fact, but nevertheless a fact—and a fact of common knowledge—that very few lawyers licensed to practice in Mississippi and certain other states will handle civil rights cases. Taking cognizance of this fact, President John F. Kennedy in 1963 requested formation of a lawyers' organization to fill the obvious need. Later the same year, in response to that request, the Lawyers' Committee for Civil Rights Under Law (herein called "LCCRUL") was organized. The following year, in further response to the same need, the Lawyers Constitutional Defense Committee of the American Civil Liberties Union (herein called "LCDC") was chartered in New York as a non-profit membership corporation.

The purpose of both organizations is to provide legal representation, without cost, to persons claiming civil rights who cannot otherwise obtain adequate legal counsel. It will hardly be denied that such service is in the great tradition of the American Bar. In response to an LCDC request for a formal opinion, the Standing Committee on Profes-

sional Ethics of the American Bar Association declared that the said purpose and activity of LCDC are "clearly within the standards and practices of the American Bar Association." (Opinion No. 786, dated December 24, 1964.)

As will appear below, the threatened prosecution of Mr. Lackey Rowe, Jr., the plaintiff herein—who is an employee of LCCRUL—gravely endangers the future effectiveness of LCDC and LCCRUL alike. For that reason, LCDC respectfully tenders this brief *amicus curiae.*

The Question Presented, and Its Importance

In their efforts to remedy the shortage of lawyers available for civil rights cases, LCDC and LCCRUL have established offices in Mississippi. (LCDC also has an office in Selma, serving Alabama, and another in New Orleans, serving Louisiana.) They have succeeded in employing competent lawyers to staff these offices, and have recruited well-qualified volunteers for short-term service. For the most part, however, these lawyers—though thoroughly conversant with civil rights law—are licensed to practice only in their home states and not in the states where they are called upon to serve.

This has been a considerable obstacle, particularly in the state courts—where, as a result of the recent decision in *City of Greenwood* v. *Peacock,* 384 U. S. 808 (1966) (holding that the right to remove civil rights cases to the Federal district courts for trial is sharply limited), most civil rights trial work must now be done. To be sure, many of the state courts—presumably in recognition of the fact that exclusion of out-of-state lawyers is often tantamount to denial of counsel—have offered no objection to the appear-

ance of such lawyers. Indeed, that was true in the Circuit Court for the Fifth District of Mississippi, at Grenada, until last year. But a substantial number of other courts follow the present practice of the Circuit Court at Grenada, and exclude out-of-state counsel.

Such exclusion renders it critically important that the few locally-licensed lawyers who *are* available for civil rights work, be left free to function, without captious distraction and harassment. Even if customary standards of professional and judicial courtesy are not required by Federal law, one must remember that legal representation in civil rights cases is affected with a public interest beyond that of the defense of the usual criminal case. The Supreme Court of the United States has explicitly recognized that such representation "is a means for achieving the lawful objectives of equality of treatment by all government, federal, state and local, for the members of the Negro community in this country." *N. A. A. C. P.* v. *Button,* 371 U. S. 415, 429 (1963).

We do not concede that the Circuit Court at Grenada is constitutionally privileged to exclude out-of-state lawyers from cases involving claims of Federal right, where adequate local representation is not in fact available. Nor do we concede that the half-dozen or so Mississippi lawyers who are generally available for civil rights work are physically capable of handling the myriad prosecutions which, in recent years, have clogged the Mississippi courts. Those questions, however, are not presented here; for Mr. Rowe is a member of the Mississippi bar, being indeed the only locally licensed lawyer on the LCCRUL staff in Jackson. The problem, rather, is that unless and until the exclusionary rule of courts such as the Circuit Court at Grenada

is abrogated or held invalid, LCCRUL must employ Mr. Rowe's services in those courts or stay out of them. And if it stays out, the losers will be the embittered and disillusioned litigants who have perfectly good Federal "rights" but can find no lawyer to claim them effectively.

Against this background, the importance of the present case is easy to discern. Already Mississippi lawyers—and particularly lawyers who, like Mr. Rowe, are not Negroes—are discouraged by formidable community pressures from acceptance of normal professional responsibility to persons accused of crime. If, in addition, those lawyers are menaced by the prospect of unfounded contempt charges against themselves, the deterrent will be still more overwhelming. And that deterrent will not be materially mitigated by eventual failure of the contempt proceeding—perhaps on the ultimate appeal to the United States Supreme Court, after years of obloquy and heavy expenditure of time and money.

Statement of Facts

At 9 a.m. on January 23, 1967, Mr. Rowe was present in the Circuit Court at Grenada where he was to represent 43 defendants who had been convicted in the Grenada City Court and who were to be tried *de novo* on appeal. Since the other full-time LCCRUL staff attorneys were not licensed to practice in Mississippi, the burden of handling all 43 cases rested on him.

At about 9:05 a.m., at a time when the defendant judge was on the bench and members of a jury panel were seated in the courtroom to the right of the center aisle, Robert Johnson (one of Mr. Rowe's 43 clients) entered the court-

room through the public entrance on the right-hand side of the room. He started to walk across the courtroom toward the section where the other defendants were seated, beyond the aisle. His course took him in front of the area where the prospective jurors were sitting. Unknown to him, the judge had announced that no one was to walk between him and the jury panel. Mr. Johnson was promptly arrested and taken out to the corridor by the defendant constable and another officer (R. 9-12).

Mr. Rowe immediately went to the corridor and had the following colloquy with the officers (R. 12):

> Rowe: What is this man being arrested for?
>
> An officer: You will find out later.
>
> Rowe: I am his attorney. I think I'm entitled to know what this man is being arrested for.
>
> An officer: Get out of the way or we'll arrest you.
>
> Rowe: I still want to know what this man is being arrested for.

Mr. Rowe did not touch any of the officers, or obstruct their passage (R. 13).

The defendant constable then arrested Mr. Rowe, took him before the defendant judge, and said that Mr. Rowe had interfered with an arrest. Mr. Rowe denied it. The defendant judge thereupon summarily ordered that Mr. Rowe be taken to jail, which was done. Thereafter, at the direction of the defendant judge, the defendant district attorney prepared a contempt citation (R. 13-15, 25). The present action was brought for injunctive relief against the contempt proceedings thus threatened.

Discussion

The question for decision is whether Mr. Rowe is threatened with punishment for what he did in the courthouse corridor on the morning of January 23, or for what he did on behalf of his clients during the preceding months, and what he had undertaken to do for them in court that morning. If he is being threatened with fine and imprisonment, and possible disbarment, as a reprisal for his conscientious fulfillment of his oath-bound pledge as an attorney and counselor at law, to uphold the Constitution and laws of the United States, it is unthinkable that a court of the United States should decline to interpose its protecting hand.

There is no need for us to analyze the pertinent authorities. That will be done by the competent counsel for the respective parties. Nor need we undertake an exploration of the factual context—including statements and acts of the several defendant officials, both before and after January 23, which disclose their personal attitudes toward Mr. Rowe and LCCRUL. Counsel for the parties can be expected to present those facts to the Court, as an aid to its determination of the central factual issue: whether this is a case of reprisal, as we think it clearly is, or whether the defendant judge would have summarily jailed *any* member of the Mississippi bar who asked a constable the reason why a client of his had been arrested, in a courtroom, just before he was to be tried there—and whether the other defendants would have acted as they did, in aid of the arrest and the contempt citation, without regard to the identity of the attorney involved.

As we say, these matters are beyond the scope of the present brief. We believe, however, that the Court may be

aided in its disposition of the case, by information as to the larger picture of which the present case is a part. One main purpose of this brief is to sketch that picture. For the dismal fact is that harassment, by punitive judicial proceedings, of lawyers who represent clients identified with controversial causes, is becoming a widespread practice—and not only in the South. This frightening trend will inevitably be either discouraged or accelerated by the decision in the present case.

On December 27, 1966, two of the signers of the present brief joined with 86 other lawyers and law teachers in submitting to the District of Columbia Court of Appeals a brief *amici curiae* in *Kinoy* v. *District of Columbia,* presently pending in that court (No. 4186). The said brief, a copy of which is incorporated herein as an appendix, explains the nature and scope of the current danger to the independence of the bar. We invite the Court's attention to what is said there.

It is worth noting that the Rowe contempt prosecution may well have a more directly harmful potentiality than the Kinoy disorderly conduct case. For Mr. Rowe is threatened with punishment not for acts done in the rather unusual setting of a Congressional subcommittee hearing, but rather—if our understanding of the facts is correct—for carrying out the routine, daily duties of every trial lawyer in the land: representing defendants accused of crime.

The present case tends to confirm the fear expressed in the *Kinoy* brief, that a general trend toward harassment of lawyers by punitive judicial proceedings is under way. Three other recent cases, arising in Virginia, Pennsylvania and Alabama, are described in that brief. And a still more recent Louisiana case adds further confirmation that the fear is not an idle one.

On February 21, 1967, Richard B. Sobol was arrested in Plaquemines Parish, Louisiana, on a charge of practicing law without a license. Mr. Sobol is admitted to practice in New York and the District of Columbia, but not in Louisiana. Since July, 1966, he has been on leave from the firm of Arnold & Porter in Washington, and has served as staff counsel for LCDC in New Orleans.

Whenever practicable, Mr. Sobol's court appearances have been made in collaboration with one of the few locally-licensed lawyers who will handle civil rights cases in Louisiana. He did, however, act alone at the trial of one Gary Duncan, a Negro, on a charge of simple battery—after being formally introduced to the court by a local lawyer at an earlier stage of the proceeding. (No locally-licensed lawyer was available to appear with him at the trial.)

It is pertinent to state the nature of the charge against Mr. Duncan, in order that the seriousness of his need for representation may be appraised. The charge against him arose out of the following facts: His two young cousins had been admitted to a recently desegregated public school, and had been subjected to hostile treatment in the school by some of the white students. On October 28, 1966, while driving to his home—and it is not to be supposed that he was ready to pick a fight, since his wife was about to deliver a child and he was on his way home for that reason—Mr. Duncan saw his two cousins being harassed by a group of white children. He rescued them and put them in his car. Then, according to his own later testimony, he touched one of the white boys on the elbow in a conciliatory manner and told him to go along home. The white boy, however, testified that Mr. Duncan had "slapped" him on the elbow. For this, Mr. Duncan was sentenced to a 60-day jail term and a fine of $150.

He was liberated on bond pending an application for review by the Supreme Court of Louisiana. On February 21, 1967, Mr. Sobol received notice that the application had been denied. This had the effect of canceling the bond on which Mr. Duncan had remained at liberty.

No locally-licensed lawyer being available at the moment, Mr. Sobol urgently applied to the trial judge for further stay and bail, pending a petition for certiorari to the United States Supreme Court. The judge granted the application, but also signed a warrant for Mr. Sobol's arrest; and he was arrested as he left the courthouse.

Later that day Mr. Sobol was released on $1500 bond. The following day he commenced an injunction action in the United States District Court for the Eastern District of Louisiana (*Richard B. Sobol* v. *Leander Perez, Sr., et al.*, No. 67-243, Section "E"). The case is now pending.

It grows ever clearer that lawyers who take controversial cases are being attacked not through the civil procedures which have traditionally been used for the resolution of disputes as to professional proprieties which do not involve moral turpitude, but through prosecutions for contempt and for violation of the criminal law. Such action can only be regarded as punishment for engaging in controversy. It is to be deplored, and should be halted without delay.

CONCLUSION

The power and responsibility of the Federal courts is not limited to the definition of legal rights. Those courts are also obligated to take stern and effective action against efforts to frustrate *enjoyment* of Federal rights. Perhaps the most direct means of frustrating enjoyment of a legal right is to interfere with access to counsel. And Federal courts have therefore stood ready to protect, from harassment and intimidation by state and local authorities, lawyers who handle controversial cases. See *Jordan* v. *Hutcheson,* 323 F. 2d 597, 599, 601, 605-06 (4th Cir. 1963).

The inevitable effect of the Rowe contempt prosecution, if it is allowed to proceed—and regardless of its eventual outcome on the merits—will be to deter Mississippi lawyers from handling civil rights cases. No such obstruction to the Federal law should be tolerated.

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APPENDIX

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 4186

ARTHUR KINOY,

Appellant,

—v.—

DISTRICT OF COLUMBIA,

Appellee.

APPEAL FROM DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS, CRIMINAL DIVISION

BRIEF OF PRACTICING LAWYERS, LAW TEACHERS AND LAW DEANS, *AMICI CURIAE*

We tender this brief *amici curiae* for the purpose of voicing our concern, as members of the legal profession, at the public danger involved in punishing a lawyer because of his vigorous performance of professional duty. We have read appellant's brief and agree with it. We believe that the judgment convicting him of disorderly conduct should be reversed, and a judgment of acquittal entered. But that belief, by itself, would not prompt us to offer this brief. It is the broader implications of the case that require us to speak.

The pertinent facts are simple and undisputed. As attorney for two prospective witnesses before a subcommittee of the House Committee on Un-American Activities, appellant brought an injunction suit to determine whether

HUAC's course of conduct—public investigation and "exposure" of persons advocating controversial causes (in this case, criticism of the Viet Nam war policy of the government)—violates the First Amendment. A three-judge Federal District Court in Washington is now considering whether it will entertain the action on the merits, or whether—contrary to the recent decision of the Seventh Circuit Court of Appeals in a case raising the same question (*Stamler* v. *Willis,* 35 U. S. L. Week 2272 (Nov. 22, 1966), decided November 10, 1966)—it will dismiss the case without trial.

For present purposes the eventual outcome of the injunction suit is unimportant. What is important is that the suit represents a serious effort to obtain judicial determination of a public issue of first magnitude—the extent to which and the procedure whereby the Constitution permits the Congress to influence or discredit private organizations or other instrumentalities of public opinion which, in our system, are part of the mechanism of popular control of government. The Supreme Court has explicitly and repeatedly recognized, at least since 1938, that private organizations do serve this purpose. *United States* v. *Carolene Products Co.,* 304 U. S. 144, 152, footnote 4 (1938); *N. A. A. C. P.* v. *Alabama,* 357 U. S. 449 (1958) and cases there cited.

Appellant appeared before the HUAC subcommittee on August 17, 1966, two days after the injunction suit was begun, as attorney for the same two prospective witnesses who were and are plaintiffs in the injunction suit. Before the subcommittee he and his law partner presented certain objections to the procedure. The subcommittee did not question appellant's right to make these objections but

overruled them on the merits. Appellant then tried to make sure that his clients' position, as well as that of the subcommittee, was clear on the record. Certain deputy marshals formed the opinion that his oral expressions were so persistent and so loud as to constitute criminal conduct. No member of the subcommittee, or of Congress, has agreed with their opinion in this regard, so far as the record shows; nor does the accusation against appellant rest on anything other than oral expression.* On complaint of the deputy marshals, appellant has been convicted and fined by the Court of General Sessions.

Discussion

We live in a time of social ferment. Legal premises once thought to be firmly established are being re-examined and re-evaluated. We are engaged in a number of great debates on such questions as the extent to which the state should mitigate disadvantages resulting from skin color or poverty; the extent to which freedom of the press should be permitted to impair the fairness of trials; the extent to which individual privacy should give way to the zeal of police and prosecutor in the detection and proof of crime; and the extent to which associational privacy and freedom of political organization should be subordinated to the investigative power of governmental organs and agencies, including Congress—the issue raised by appellant's injunction suit, mentioned above. In these areas and others, the

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* We do not overlook the trial court's ruling that appellant's reaction to his (possibly accidental) strangulation by the arresting officer was itself disorderly conduct. The ruling is so clearly erroneous as to require no comment here. See Point IV.C. of appellant's brief.

soundness of established doctrine is being challenged. Some changes have been effected already, and others may ensue from the ongoing debate.

Social change never comes without controversy. It is the glory of our system that social controversy is recognized as a wholesome thing, and is channeled into the legislatures and courts—not left to the explosive and destructive processes of self-help. The broad issue in the present case is the extent to which lawyers can continue to participate vigorously in the reasoned disposition of these controversies by legislatures and courts.

(1) Even if this case stood by itself, we would view appellant's criminal conviction with grave concern. It means that participation as an attorney in deeply controversial problems is an extra-hazardous activity. If a lawyer can be arrested and prosecuted by a peace officer,* without at least the direction or express and formal permission of the tribunal before which he is arguing, on a charge based solely on the manner in which he speaks in the performance of his professional duties, the participation by lawyers in our great debates may be smothered.

The Supreme Court has unequivocally proclaimed the value of their participation, declaring that litigation—which calls for the professional services of lawyers—is, in some contexts, more than "a technique of resolving private differences; it is * * * a form of political expression."

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* And presumably by any bystander, it being remembered that private citizens are privileged to arrest and initiate prosecution for breach of the peace as well as felony (Restatement of Torts, Sec. 119(c)). The decision below seems to open the way to this possibility. See footnote 1 of the trial court's written opinion: "D. C. Code §22-1107 incorporates the common law concept of breach of the peace * * *."

N. A. A. C. P. v. *Button,* 371 U. S. 415, 429 (1963). And the Court took pains to point out that its decision extends beyond the field of racial discrimination to the whole range of the First Amendment. *Id.* at pp. 444-445. Appellant's efforts, for which he has suffered prosecution and conviction, were indisputably directed to the assertion of his clients' claims to First Amendment protection. We have already noted the stern alternative that faces us if we close the channels of reasoned dialogue (where the contribution of the legal profession is so vital) and thereby leave only the processes of self-help available for resolving the great public issues of the day.

(2) There is reason to believe, moreover, that this case does not stand alone. Press reports indicate that the present case may reflect, and provide impetus to, a general trend toward more intensive harassment of lawyers who represent clients identified with controversial positions. We have regretfully become accustomed to accept the hard fact that such lawyers must often expose themselves to social ostracism and private boycott. Beyond this, there have been some official efforts to curb their activities through general legislation, such as the Virginia statute invalidated in the *Button* case. But efforts to sterilize the bar now seem to be taking the form of criminal prosecutions and criminal contempt proceedings against individual practitioners—an approach that is more difficult to deal with because each proceeding requires a separate and burdensome defense.

Appellant's conviction, on August 19, was given wide newspaper publicity. On September 13, Philip J. Hirschkop of Alexandria, Virginia, attorney for a Negro whose death sentence for rape had been reversed and a new trial

ordered, was convicted of criminal contempt and sentenced to a $50 fine and five days in jail, the jail sentence being suspended. He was charged with failure to appear in the state court at Lynchburg on the day scheduled for retrial of the rape charge. *Washington Post,* September 14, 1966, p. B-3. According to the uncontested evidence at the contempt hearing, the rape trial was set for 9:30 a.m. When it became apparent, shortly before then, that the defendant would be unable to obtain from the official stenographer a promised transcript of earlier proceedings (for use in the new trial), his attorneys decided to petition for removal of the case to the Federal District Court at Lynchburg, on civil rights grounds. Mr. Hirschkop's associate counsel, Ruth Harvey, had been instructed by him to file the removal petition when the Federal Clerk's office opened at 9 a.m., and then proceed at once to the state court to advise it of the filing of the removal petition, which operates as a stay of state court proceedings. The Federal Clerk's office opened late that morning because the deputy clerk did not arrive until about 9:20. Miss Harvey therefore reached the state court about twenty minutes late. Mr. Hirschkop was engaged in a proceeding in a different court at that time (Tr. pp. 9, 16, 23-25, 28, 32-34, 44-51).

On November 3, Jack Brian of Philadelphia was arrested and charged with disorderly conduct on the ground that he had been unduly persistent in protesting the action of a justice of the peace in fixing $1000 bail for four Swarthmore College students accused of displaying obscene material. The students were discharged the following day in Delaware County Court, but Mr. Brian's disorderly conduct case was set down for trial. *The Evening Bulletin* (Philadelphia), November 4, 1966, p. 8.

Appendix

On November 16, Donald A. Jelinek of the New York bar, staff counsel for the Lawyers Constitutional Defense Committee of the American Civil Liberties Union, was arrested and charged with practicing law in Alabama without a license. His arrest occurred in the course of an appellate trial (involving Federal issues) in Marengo County Circuit Court in which Mr. Jelinek was representing the defendant-appellant. *New York Times,* Nov. 17, 1966, p. 34. The fact that Mr. Jelinek was not a member of the Alabama bar was known to the court before the appellate trial began.

Other cases could be cited. But these suffice to indicate that open season on lawyers may have been declared. We express no present opinion on the merits of the Hirschkop, Brian and Jelinek cases. Even assuming, *arguendo,* that these lawyers are rightly subject to discipline, the resort to punitive judicial process seems disproportionate to the infractions charged—especially since the civil disciplinary procedures that are ordinarily used in such situations were available. And because appellant's conviction can reasonably be expected to encourage somewhat similar harassment of other lawyers, these three cases, together with appellant's, suggest the beginning of a general trend. A halt should be called now, before the trend accelerates.

As lawyers who may wish to take part in the great debates, we have a personal interest—and, we think, an interest shared by thousands of our brothers at the bar—in any threat of punishment for performance of our recognized professional duties. And many of us, as law teachers, have an obligation to let our students know whether the high standards of independent devotion to the law and its constructive development, that we have received from our

fathers, will be passed on intact to our sons. We are also obligated to resist any debasement of that heritage.

Appellant's conviction should be reversed, and a judgment of acquittal directed.

Respectfully submitted,

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Frank et al v. S. Frank Rafferty et al. - case

Please Return Original Order

[N.O.]

Joe - you can reach me evenings and all day Friday at 914-254-5046. Pacific Grove

The Workers Defense League applies for financial assistance in connection with the legal, travel and other expenses necessary in order to accomplish the return of fifty-one (51) unjustifiably discharged longshoremen to their employment on the West Coast waterfront.

The Nature of the Action and Past Proceedings:

During the past five years the Workers Defense League has spent over $20,000.00 in the prosecution of a law suit that seeks to establish the right of 51 longshoremen to have their complaint heard on its merits in the United States District Court in San Francisco. (A statement on expenditures to date is annexed as an exhibit to this proposal.) On March 18, 1968 the United States Supreme Court denied review (and thereby sustained) an earlier decision of the Court of Appeals for the Ninth Circuit which had upheld the sufficiency of the complaint in the action. This victory having been acheived, the next step in the litigation is the establishment of the illegality of the actions of the union (International Longshoremens & Warehousemens Union and its Local No. 10) and the employer (Pacific Maritime Association) on the trial itself. The Workers Defense League believes this to be an action of crucial importance and of precedent making significance. Its importance and significance may be evaluated from the following which is quoted from the WDL brief in the United States Supreme Court:

> "May a collective bargaining representative, motivated by hostility, invidious considerations and palpable bad faith, collusively and jointly with the employer enter into secret oral amendments to a collective bargaining agreement which have for their purpose and intent the discriminatory discharge of certain members of a collective bargaining unit (members until then entirely in good standing, on grounds that are solely retroactive in their application) - grounds which make alleged past conduct subject to the supreme sanction of permanent unemployability in the industry - while simultaneously engaged in the process of hiring new men, men theretofore strangers to the industry, to replace them?" (Emphasis in original.)

The longshoremen involved (the overwhelming majority of them Negroes) had been for some years employed in the Port of SanFFancisco as Class B longshoremen. The essential distinguishing factor between Class B and Class A longshoremen was that the latter were permitted membership in the union and as such members had the privilege of choice in t he acceptance or rejection of offered employemtn. That is to say that the Class A longshoremen had the right to refuse to accept onerous, backbreaking and difficult assignments. In any event the longshoremen represented by the WDL were summarily deregistered - that is, prohibited permanently from any further employment on the Pacific Coast as longshoremen or in allied occupations - by the joint action of the unions and the employer. They were given no specification of charges against them. They were not permitted to defend themselves. They were given no hearing. Although they were until the moment of deregistration in good standing, were guilty of no current infractions, had corrected all past violations of the rules of their employment, if any, were entitled to assignment to work and were, in fact, regularly assigned to work, they were arbitrarily deregistered.

Why the arbitrary deregistrations?

for Carl

The union and the employer were motivated in their hostility towards these longshoremen because they, in effect, had taken on the leadership among the Class B longshoremen of opposition to the bureaucracies of both the union and the employer and the unfairness with which the Class B men were treated under the collective bargaining agreement. More specifically the opposition of the B men, among whom these longshoremen were the outspoken leaders, was predicated upon the refusal of the employer and the union to advance them to A status combined with the payment of $29,000,000.00 by the employer into a pension fund whose only possible beneficiaries would be the Class A men. Significantly, the main consideration for this $29,000,000.00 payment was the deprivation in the collective bargaining of all of the protective devices and provisions which in any way inured to the benefit of the B men. In short, the B men were deprived of the benefit of all of the beneficial "work rules" and the command of the employer -- however arbitrary it might be - became the standard operating rule. The opposition of these longshoremen on behalf of the entire B group because of these invidious distinctions earned for them the emnity, the hostility and the malice of the union and the employer. It bears emphazing at this point that the hostility and malice on the part of the union was that of its bureauacracy alone. It was not the hostility of the rank and file membership. In fact the membership of the union voted by an overwhelmning majority in favor of recinding the deregistrations of these longshoremen, advancing them to A status and permitting them to become members of the union. The bureaucracy, however, would not budge.

In April of 1964 these deregistered longshoremen, having first exhaused all internal grievance procedures available to them, commenced the present action in the United States District Court in San Francisco. Shortly thereafter the WDL entered the case on behalf of the men who had neither the finances nor the legal talent to carry it on. In October of 1965 the District Court dismissed the complaint and an appeal was taken to the Court of Appeals for the Ninth Circuit which reversed the dismissal, found the men to have a good cause of action and returned the case to the District Court for actual trial. This occurred in August of 1967. Thereafter both the union and the employer sought to appeal to the United States Supreme Court. That court, as has already been indicated, reviewed the record and on March 18, 1968 denied a writ of certiorari. The litigation is now therefore back in the District Court and is being readied for trial.

[N.D.]

WHAT IS THE WORKERS DEFENSE LEAGUE AND
WHAT IS ITS INTEREST IN THIS CASE.

The Workers Defense League is a national non-partison organization devoted to the vigorous defense of democratic rights and social justice. Founded in 1936, it has a vital history of effective service on behalf of justice to workers, in defense of the trade union movement and on behalf of union democracy. WDL has actively supported the trade union movement on the questions of the right to organize and the right to strike. It has also represented individual workers in their struggles with both management and with impersonal, bureaucratice and sometimes corrupt trade unions. Among the more recent cases similar to the one under consideration

are Schoenfeld v. International Brotherhood of Painters, Decorators and Paperhangers of America. WDL cooperating attorney, Burton H. Hall represented a group of rank-and-file painters who were demanding the end of a trusteeship over District Council 9 of the painters union and free, court supervised elections for all offices. Mr. Hall handled the case with full WDL cooperation and WDL Legal Committee Chairman, Irving A. Thau and President, Rowland Watts, filed a brief amicus curiae on behalf of the rank-and-file painters. The case was won and in the resulting court supervised elections, the rank-and-file leader, Frank Schoenfeld, won an overwhelming victory. District Council No. 9 is now one of the most democratic and responsible unions in the country. Full mass membership meetings are held regularly for the first time in decades and ultimate involvement of the membership in the running of the union has insued. WDL is presently representing members of several unions in their attempts to receive cost of living payments, upgrading of seniority rights, etc. ~~and others~~. We were active in the fight for the right to organize among New York City's taxi industry and have given legal and tactical advice to nurses involved in a fight for union recognition and collective bargaining rights in a New York hospital.

The Workers Defense League has many prominent people from

the labor movement, and civil liberties and civil rights movements on its board to whom it can go for advice and counsel. Among those are:

Mr. Joseph A. Beirne, President of the Communications Workers of America and a Vice-President of the Workers Defense League

Mr. Patrick Gorman, Secretary-Treasurer of the Amalgamated Meat Cutters Union and a Vice-President of WDL.

Mr. Paul Jennings, President of the International Union of Electrical Workers and a Vice-President of WDL.

Mr. A. Philip Randolph, President of the Brotherhood of Sleeping Car Porters Union and a Vice-President of WDL.

Mr. Norman Thomas, WDL President Emeritus.

Mr. Irving A. Thau, Chairman of WDL's Legal Committee and

Carl Rachlin,)
Ernest Fleischman,) WDL National Counsel
Francis Heisler,)

Burton H. Hall,) WDL Cooperating Attorneys
Floyd Feldman,)

all well known lawyers with much experience in labor, civil rights and civil liberties.

When the Workers Defense League entered the longshorecase it was investigated by the WDL Legal Committee, the Labor Rights Committee and the Administrative Committee before the case was accepted. The WDL then set up a sponsoring committee to help the men and their Longshore Jobs Defense Committee. The members of this sponsoring committee are:

Daniel Bell
Herman Benson
Dr. Thomas N. Burbridge,
Matthew D. Clarke,
Herbert Gold,
Gordon Haskell,
Nat Hentoff,

Herbert Hill
Norman Hill,
Paul Jacobs
Julius Jacobson
Prof. Seymour Martin Lipset
Philip Selznick
Rev. William Shirley
Harvey Swados
Norman Thomas

The sponsoring committee is chaired by Michael Harrington and Bayard Rustin.

WDL lawyers representing the 51 men are Irving A. Thau, Arthur Brunwasser and Francis Heisler.

[N.O.]

WDL

Robert Joe Pierpont

New Stage In The Longshore Struggle

Reprint from New Politics

by WORKERS DEFENSE LEAGUE, 112 East 19th Street, New York, N.Y. 10003.

AFTER FOUR LONG YEARS of legal battles to have their case heard, 51 West Coast longshoremen have won the right to file suit in Federal District Court against Harry Bridges, President of the International Longshoremen's and Warehousemen's Union (ILWU) and all officials in the union and management responsible for their firing in 1963.

On August 28, 1967, in a unanimous ruling based largely on a recent Supreme Court decision (Vaca v. Sipes, February 27, 1967, 386 U.S. 171), the Ninth Circuit Court reversed the decision of the Federal District Court in October 1965, dismissing the complaint in which the longshoremen alleged that they had been arbitrarily and discriminatorily deregistered (fired). In their decision, the Circuit Court judges noted that the earlier dismissal by the Federal District would have been improper even if only one of the longshoremen filed an affidavit that "shows insistence on false charges, refusal to hear the employee and deliberate evasion of fair consideration." The court further called attention to the fact that none of the several affidavits filed by Pacific Maritime Association (PMA) officials "show that any of the plaintiffs deserved deregistration or that they were properly deregistered under any rules, valid or invalid," and "none of the affidavits tend to show that the plaintiffs could not prove the aforesaid allegations of their complaint."

THE STORY STARTED on June 17, 1963 when 82 full time San Francisco longshoremen with four years seniority were sent unsigned form letters on the stationary of the Joint Port Labor Relations Committee of the PMA and the ILWU.* The letters informed the recipients that they were fired.

The decision to fire these men was engineered by ILWU President Harry Bridges and made at secret trials and meetings. The letters did not inform the accused of their crimes but simply indicated that they had been found guilty of infractions of rules and that if they could supply proof in writing of their innocence, they would be allowed an *ex post facto* appeal hearing.

Approximately 70 of the 82 fired men were granted appeal hearings. (Some of the men were so disgusted they refused to appeal.) The hearings took place on July 11, 1963 in a seedy loft on Pier 24 of San Francisco's Embarcadero. The jury to which the appeal was being made was composed of the Joint Port Labor Relations Committee, aided by several PMA attorneys and four ILWU prosecutors; the same jury which had tried the men secretly

* For additional background information see: "The ILWU: A Case Study in Bureaucracy", an article in two parts by Stanley Weir, *New Politics,* Winter and Summer issues, 1964; "The West Coast Waterfront" and correspondence by Harvey Swados, *Dissent,* Autumn 1961 and Spring 1962; "Harry Bridges Own Witch Hunt," Herman Benson, *Union Democracy in Action* No. 13, 1964; *Most Notorious Victory: Man in an Age of Auotmation,* Ben B. Seligman, Free Press, New York, 1966; "Harry, The Gag Man," Paul Jacobs, *The New Leader,* July 6, 1964.

and fired them. As each appellant was seated the hearing chairman read a prepared statement which informed him that: (1) He would not be allowed counsel or witness. (2) The prosecution would not produce its witnesses for him to question. (3) He would not be told the nature of the charges against him but only the general area of infraction and if he desired to know the exact nature of the charges, he could go a week later to an ILWU-PMA records office where a clerk would supply him with the information. He should arrive there alone, without counsel or witness. No trial was to be conducted by the clerk. The hearing constituted the basis for the decisions that would be made on the appeals. (4) He would be notified of the decision in two weeks but if he felt he had been discriminated against and wanted to appeal further, he would have to do so within 10 days or prior to the time he learned the decision of the hearing. (5) Finally, he was informed that the purpose of this hearing was to allow him to make any statement he desired in his own defense.

All hope that the hearing would miraculously save the jobs of the fired men was shattered. Few of the appellants remained for more than minutes. The hearing was simply an extension of the arrogance that, for four years, had buffeted these and 700 other longshoremen hired in 1959 with B (second class) registration. Required to be present in the hiring hall 70% of each week, they were given the hardest and dirtiest cargoes to work: that is, they were given the jobs left over after the A men (union members) had taken their pick.

While they were made to pay dues and work under the jurisdiction of the union, they could not join it. Ironically, these non-union members were forced to do most of the work deep in the ship's holds, the workplace that saw the creation of the militants who built the union in the 1930s. Denied voice and vote, they could attend union meetings only by sitting in a segregated section of the meeting hall balcony. On-the-job they soon became the victims of the speedup. While they lacked union representation, the disciplinary rules governing their conduct were far more stringent than those applying to A men.

WHEN FIRST HIRED they had been told that they would be promoted to A status within "6 months to a year." The staff of ILWU Local 10 began processing them for promotion at the end of 1959. On this and several other occassions, Harry Bridges personally intervened to frustrate the efforts of the local. (Bridges' 1960 Mechanization and Modernization contract which claims to have solved the problem of automation on the waterfronts of the West Coast removed control over registration from the local unions and placed it in the hands of top management and international union officials headed by Bridges).

After three years the tempers of the B men were raw. They had more than served an apprenticeship. They were skilled and held the same responsibilities on the job as did the A men. The A men were in a rebellious mood also. Everyday they had to listen to the B men criticize them for not being able to run their union, and in many cases the B men were their sons or nephews.

This pressure and the increasing shortage of skilled men made Bridges and the PMA officials decide to upgrade the B men to A status and hire a new, B list. A star chamber committee of men willing to carry out Bridges' wishes took the job of screening applicants for A status away from Local 10. Approximately two months before the promotions were to take place this committee announced that all those B men who were not promoted would not be allowed to remain B men but would be fired. At a subsequent meeting of Local 10 they asked that the membership vote to fire "about 90 B men." The names of the 90 were withheld. The membership refused, particularly since the local union had discovered irregularities in the committee's screening methods.

At a subsequent meeting the Secretary-Treasurer of Local 10 reported that Bridges and the employers had already signed for the A registration of over 400 B men, yet Bridges announced to the meeting that none of the B men would be promoted unless Local 10 voted to fire the 90 . . . "you are not going to let the few stand in the way of the many are you?"

The coercion attempt worked and approximately 90 "John Does" were voted out and Bridges had spread his crime and guilt among almost the entire membership. On June 17, 1963, approximately 500 B men were promoted to A status simultaneous with the firing of 82 men. Within the next two weeks what Bridges had accomplished became apparent. During the suspense of the long weeks prior to the firing, all B men (except those few who had separated themselves from their fellows by their slavish support of Bridges' anti-B men policies) feared that they would be among the condemned. As the names of the 82 became known it was clear that the entire process had been a frameup. The victims were innocent of all miscounduct. They had not been fired under the existing stringent rules, but rather under rules never published, or in any way made known, prior to the firing. Their crime was simply that they had a critical attitude toward those who had created and were and are perpetuating a second class citizenship system among workers in the stevedoring industry. All realized that they could have been among the 82.

This realization won for Bridges what in the opinion of this writer was his primary goal in the entire affair. The promoted men entered the union intimidated and to this date have not shaken the pre-1963 relationships of power in Local 10 which are so advantageous to Bridges.

On the night of July 11, 1963, the membership of Local 10 passed two motions demanding that the fired men be returned to their jobs. The staff of local 10 took the motions to the port labor relations committee and could not get agreement. At the next higher, or Area Labor Relations Committee level, a rump meeting was called and the one union representative present (who was also a member of the star committee that had originally selected the 82 for firing) colluded with the employer representative and killed the Local 10 motions "in committee."

Abandoned, over fifty of the 82 applied for unemployment insurance only to find that their right to it had been challenged by the PMA. In two subsequent hearings the fired men won their appeals and the hearing boards ruled that they should not have been fired. In April 1964, having been

denied all further appeals, they filed suit in Federal District Court against Harry Bridges and all officials in both union and management who were responsible for their firing. Their complaint asked that they be returned to their jobs, promoted to A status, with full rights and compensated for lost income.

They obtained the support of the Workers Defense League which helped them form a group of sponsors for their Longshore Jobs Defense Committee. The sponsors group is composed of Daniel Bell, Herman Benson, Dr. Thomas N. Burbridge, Matthew D. Clarke, Herbert Gold, Gordon Haskell, Nat Hentoff, Herbert Hill, Norman Hill, Paul Jacobs, Julius Jacobson, S. M. Lipset, Philip Selznick, Rev. William Shirley, Harvey Swados and Norman Thomas and is chaired by Bayard Rustin and Michael Harrington.

The WDL supplied the fired longshoremen with attorneys who also had to take over the work in three legal cases: the San Francisco longshoremen, a similar group of longshoremen in the Port of Stockton, California, and the libel suit that Harry Bridges pressed against the sponsors shortly after they publicly announced their support of the fired longshoremen.

In October 1965, the Federal District Court dismissed the case of the 51 San Francisco longeshoremen stating that the proper place to have sought relief was the National Labor Relations Board. Another five of the original 82 men who were fired had indeed filed complaints with the NLRB and in May 1965, the local NLRB examiner in San Francisco upheld their charges, ruling that they should be returned to their jobs with back pay. In November the general counsel of the NLRB in Washington, D.C. reversed the San Francisco ruling. The only recourse for the five men was to go to the Circuit Court of Appeals. They were unable to do so for financial reasons.

To the amazement of everyone including the ILWU-PMA officials who conspired to oust the men from their jobs, the 51 plaintiffs have stayed together and sustained the fight to get their jobs back. Ninety per cent of them are Negro and so have had no other choice. Discrimination in the Bay Area job market, Harry Bridges' televised slander that the fired men are "chiselers and crooks," and the four year blot on their job records have kept most of these men in marginal jobs since 1963. There are, however, even deeper motivations for their persistence. Most of them had menial, part time or casual work prior to becoming B men. As B men there was the hope that they could become A men and enjoy the economic advantages involved. A black longshoreman, after all, enjoys quite a bit of prestige in his community. More important, for most of these men, employment on the waterfront was the first opportunity to overcome the castrating matriachal structure imposed on black American families for over 300 years. It promised an end to shining shoes and bussing dishes and an end to the servitude of their wives, many of whom were forced to work as domestics. After their firing, most of these men had to return to menial employment in hospitals, restaurants and hotels and most of the wives had to return to jobs as domestics, full time.

Amazingly enough, these men have kept their deep resentment under control. They feel that the high precentage of Negroes among the 82 fired

is the result of an indirect form of discrimination and callousness in the leadership of the ILWU-PMA. That it was not direct racial discrimination is evidenced by the fact that a little less than half the membership of Local 10 is white. Also significant is that much of the frameup was carried out by Negro ILWU officials. Like many Negro members of Local 10, these officials perpetuate the belief that Harry Bridges is responsible for getting large numbers of Negroes into the longshore industry during World War II. The black B men were free to rid themselves of this myth and to see that Bridges has used the bigotry in other waterfront unions to win for himself a bloc of members who feel obligated to vote for him and his policies. It became important to silence the young Negro (B) longshoremen precisely because they were infecting the older men with their critical attitudes. Bridges cannot stand the loss of his base in the port of San Francisco. Dissent has been growing. 42% of all longshoremen on the West Coast voted against the second of Bridges' "automation" contracts in 1966, and San Francisco was the only major port to give it a majority and the lead necessary to overcome its widespread opposition.

A lot is riding on the case of the 51. Only in the last several weeks, since their court victory, have they been operating from a position of legal strength. It is likely that the ILWU-PMA will appeal the Circuit Court ruling to the Supreme Court They are already seeking a rehearing in the Circuit Court. If they are counting on a denial of justice through delay, they will meet with disappointment. Racial discrimination in our society and a commitment to their own integrity will keep the 51 together for as long as it takes.

ROBERT JOE PIERPONT *is Administrative Secretary of the Workers Defense League.*

The embattled longeshoremen described in the article, New Stage in the Longshore Struggle, need help to meet legal expenses. If readers would like to help, please send contributions to:

WDL–LJDC
c/o Eathen Gums
1706 83rd Ave.
Oakland, California 94621

[N.D.]

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. MR 1335

FRANK SCHONFELD, MIKE PAIKIN, WILLIAM PAPSON, HARRY AUERBACH, CARL BLUM, JAMES CUOCO, FRANK LORIA, CARMELO VACIRGA, DOMINICK, DI SANNO, GEORGE HAMILTON, STEPHEN JESSO, STEPHEN YOUSCHAK, GIOVANNI BARTOLOTTA, DOMINICK CALACI, M. REINER, FRANK NARDI, ALFRED JONKE, ANTONIO RIVERA AND JOHN IMBASCIANI, each of them individually and on behalf of all others members of local unions affiliated with District Council No. 9, Brotherhood of Painters, Decorators and Paperhangers of America,

Plaintiffs-Appellees,

-against-

S. FRANK RAFTERY, as General President, or O.B. SATRE, as General Secretary-treasurer, or MICHAEL DI SILVESTRO as General Vice President, or JOHN C. DAMERY, as General Representative of the Brotherhood of Painters, Decorators and Paperhangers of America,

-and-

LOUIS CAPUTO, as President, or JOHN C. DAMERY, as Special Trustee, of District Council No. 9, Brotherhood of Painters, Decorators and Paperhangers of America,

Defendants-Appellants.

ON APPEAL FROM AN ORDER OF THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR WORKERS DEFENSE LEAGUE AS *AMICUS CURIAE*.

This brief *amicus curiae* is filed by the Workers Defense League (WDL) with the consent of the parties and pursuant to permission granted by the Court.

BACKGROUND OF WORKERS DEFENSE LEAGUE:

The WDL, an unincorporated voluntary membership association, was formed in 1936 under the leadership of Norman Thomas who remains its President Emeritus. It has a membership of several thousand persons throughout the United States who are active largely in the professions and in various fields of public endeavor. The largest component of its membership, next to that of private citizens with records of public service, are officers of labor unions and persons professionally involved in the labor movement.

The WDL was established in an effort to organize a permanent active group which would give aid and assistance, legal and otherwise, to workers, to labor unions and to individuals in all walks of life who had received in specific remediable situations, something less than social justice. The necessity for its organization originally stemmed from the desire to consolidate the efforts of a number of Ad Hoc Committees which had been formed in the thirties in response to a variety of specific problems arising from one phase or another of the union organizing drives then being conducted.

The activities of the WDL have not, however, been rigidly circumscribed. It has seen its task as the defense of individual rights staked out by law and the

establishment of new rights not yet defined by law, which, as our society evolves, become necessary to the dignity and freedom of the individual. It strives to enlarge the area of individual choice and freedom by the most effective means available.

The WDL has worked closely through the years with a large number of other organizatins in the fields of civil rights and liberties and in the labor movement. It has a pro-labor bias with emphasis on the welfare of the worker and justice for the individual.

INTEREST OF WORKERS DEFENSE LEAGUE:

For some years prior to the Senate Investigation conducted under the chairmanship of Senator McClellan, the WDL was concerned with problems of corruption and mismanagement in certain unions. It was convinced that these evils were the direct consequence of the denial of basic democratic processes in the operation and structure of the unions involved. It took the position, for a variety of reasons, that unions bore a heavier obligation -- a deeper responsibility -- than other private organizations to maintain the substance of democracy in their activities. First, the union's power is the power to govern the working lives of those for whom it bargains and, like all governing power, should be exercised democratically. Secondly, unions should be

democratic because the power which unions hold over the individual worker's livelihood and welfare is largely derived from government, and they, consequently, should maintain the same democratic standards as are required of the government itself. Thirdly, unions should be democratic because their principal moral justification is that they introduce an element of democracy into the government of industry. They permit workers to have a substantial voice in determining the conditions under which they shall work. This high objective of industrial democracy can be fulfilled only if unions are themselves democratic and only to the extent that workers are allowed to participate in the selection of their leaders and in the determination of union policy do they become so governed.

Senator McClellan observed that his Committee had during the course of its investigations "found time and again the denial of the right to vote, the denial of the right to work, the denial of the right to have a voice, the denial of the basic human rights on which our very freedom was founded." *(Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, p. 1103; hereinafter referred to as Leg. Hist.)* The WDL was long aware that these evils existed in certain *small* segments of the labor movement. It was convinced

that only proper and ultimate response to them was the enforcement of genuine democracy in their operations and activities. Senator McClellans's observation that "if you would give to the individual members of the unions the tools with which to do it, they would pretty well clean house themselves" (*Leg. Hist., p. 1102*), was an observation long held as a tenet by the WDL. The WDL therefore welcomed the enactment of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. Sec. 411 ff., hereinafter referred to as the Act). It welcomed it because it believed that its provisions, for the first time, made judicially enforceable, in a timely and effective manner, on the complaint of the individual member aggrieved, the infringement of basic democratic rights. The WDL, consequently, has a very special interest in the subject matter of the present litigation.

The WDL recognized that for the overwhelming part unions are democratically conducted, designed for the benefit of their members and amply responsive to their interests. It has always had fraternal relationships with a large number of unions, with their elected officers and with AFL-CIO itself.

Since this Court will, in effect, in this litiga-

tion be setting certain of the limits for the effectiveness of the Act as respects internal union democracy, the WDL urges that the decision of the court be affirmed -- that, more generally stated, the wisest scope possible be given to the vindication of the democratic rights of union members aggrieved by their infringement in offending unions under the appropriate provisions of the Act. The WDL is convinced that the welfare of the labor movement can best be maintained and enhanced by the vindication of the Appellees' position in this litigation.

THE INSTANT LITIGATION:

For some years prior to the commencement of the present litigation the WDL followed with increasing dismay the ever growing process of internal corruption, the ever growing shadow of autocratic control, and the almost total perversion of trade union aims and purposes which characterized the history of the Rarback domination of District Council No. 9 from its very inception. Repeatedly, there came to the attention of the WDL incident after incident of disregard of the democratic rights of the members of the constituant locals making up the membersiip of District Council 9; incident after incident of discrimination and worse against union members who had attempted to voice their opposition, or who had attempted to call for reform, or who had sought redress of legitimate

grievances; incident after incident of electoral fraud involving both District Council 9 and its constituent locals; incident after incident which left no conclusion possible except the presence of rampart corruption with respect to (and blatant disregard of) underlying collective bargaining agreements; and incident after incident which involved the lack of both substantive and procedural due process at every level from the job grievance through the quest for redress at the local level, the District Council level and in the Brotherhood itself. The indictment of Martin Rarback came as no surprise to the WDL. The WDL had long since become aware of a pattern of conduct throughout the entire District and leading into the Brotherhood itself that was of so deliberate and studied a character -- that almost openly exhibited so thorough going a process of wrongdoing -- that it could have no other reasonable explanation than the careful, experienced, knowledgable and expert activity of a completely corrupt and self-serving bureaucracy.

When Rarback was indicted it was, as already remarked, a matter of no great surprise. Its only element of surprise lay in the wonder that it had been so long delayed in the face of its patent necessity to any one who stopped to observe. When, immediately thereafter, the Brotherhood imposed the Trusteeship on District Council

9, the WDL felt relieved and even, to a certain extent, elated. The WDL had no great faith in the bureaucracy of the Brotherhood -- its past conduct had precluded such regard. Yet, the WDL felt that the indictment of Raraack had so impressed itself on the public consciousness that the Brotherhood, whether it was genuinely interested in the reform or not, at least to fabricate a facade or image for itself, would have no choice but to take some substantial measures to clean up the mess that it had itself silently encouraged. The history of the Trusteeship spread at length on the Record before this Court demonstrates conclusively how little ground there was for even that qualified optimism on the part of the WDL. In every crucial aspect of its activities the Trusteeship has demonstrated that it is not being administered in good faith and, since men are ultimately judged by their actions, and not by their verbal professions of good intention (and there being in the present instance not a scrap of oountervailing evidence or even profession of good intention since the Trustee himself in the Court below admitted that he did not understand it was his function or mandate to apply himself to the ending of corruption) it necessarily is the further conclusion that is compelled that it was not instituted in good faith for allowable purposes either.

Consider further in this connection the mass of evidence contained in the Record of the clear and ob vious disregard of its legitimate functions by the Trusteeship. To take just some of the more glaring examples: the admission by the Trustee that the termination of corrupt practices was considered by him to be, in effect, beyond his function and mandate; the demonstrated continuence during the Trusteeship of "sweetheart" dealing to the direct and obvious detriment of the members of the union on the specious excuse that it had gone on "for years and years and years and years"; the unwillingness to entertain, consider or act upon obvious grievances -- for example, tnat of the Woodfinishers; the reappointment of Martin Rarback to a position of practically equal (and perhaps even greater prestige) authority and function almost immediately and without even the pretense of investigation as to the truth of the alleged multitude of instances of wrongdoing and mismanagement; the reappointment of Rarback's entire "machine" even though there could be no reasonable doubt of their conscious and deliberate involvement with Rarback over nearly a score of years in corrupt and dishonest practices; the patently false and evasive testimony given by the Trustee himself on the trial below; the grudging "cooperation" given by the Trustee to the District Attorney; the stuffing of ballot boxes in an election held during the administration and

and under the supervision of the Trustee himself; and the conception by the Trustee that his function and mandate resided in maintaining the *status quo* conceived by him as being the maintenence of Rarback's corrupt crew in positions of power as a countervailing force as against, not the entry of the Appellees into power, but the restoration of democracy into union affairs.

Can it reasonably be concluded that the Trusteeship is other than a deliberate vehicle designed and maintained to perpetuate the corruption and mismanagement of the Raraack regime? That it was conceived and imposed other than in bad faith and for improper purposes? We submit that not only are the conclusions compelling -- predicated on clear and convincing evidence and without serious or substantial contradiction in the Record -- but even, perhaps, beyond a reasonable doubt.

The conclusion is fortified, of course, by the deliberate failure of Raftery and his associates to allow themselves to be cross-examined although the court below repeatedly called for their testimony. Crucial as their testimony would be they chose silence instead.

We need not burdon this Court further with a recital of the deliberate failures and wrongdoings, the deliberate blindness and falsehoods (even by the Trustee himself at the trial below), and the unfiduciary character of the Trustee's actions which are so painstakingly set forth

at length in the opinion of the District Court and even at greater length and in more crucial aspects in the Appellee's brief. Even the brief for the Appellants is compelled, from time to time, to admit (sometimes obliquely and sometimes directly) many of those same elements of failure, of wrongdoing, and of almost deliberate blindness with respect to basic moral conduct and procedure on the part of the Trustee. The Appellants in their brief, attempt to excuse those failures, to minimize them, and at times to ignore them. But even then, the overall picture which emerges is not a pretty one. A failure to affirm the order appealed from can only be taken as a signal by these Appellants (and by others similarly situated bureaucratically) that the Act is a dead letter, that corruption may be indulged in, that democracy and fairness are mere platitudes to be expressed but not to be acted upon, and, finally, that there is no effective vehicle for the redress of grievances respecting the internal mismanagement of trade unions. This Court, we submit, should not lend itself to the emmision of such a signal.

It is undoubtedly true that this Court has at various times (as have other Courts) expressed the policy position to the effect that misdeeds and mismanagement in the

internal affairs of trade unions is best left to the policing of the unions themselves. That attitude has been expressed, predicated on the assumption that in the main the trade union structure is basically honest, democratic and able to deal with its own evils. Undoubtedly that premise is true, but only as a generality. To that generality there are exceptions and a more glaring one than the present instance is difficult to imagine. Here nothing save judicial intervention can serve to rectify the accumulated wrongs involved which still continue unabated.

Moreover, statutory enactments and judicial authorities indicate a sound legal basis for doing so. They, like the facts involved, have been spelled out at length in the decision below and in the brief for the Appellees. We see no need to restate those propositions, those statutes and those authorities at length. We indorse them as fully as though herein set forth at length.

We urge only as a matter of sound public policy -- compellingly supported as it is by the facts and the law -- that the order appealed from be affirmed in all respects.

Respectfully submitted,

ROWLAND WATTS
and
IRVING A. THAU
Attorneys for Workers Defense League, *Amicus Curiae*

[redacted]

[redacted]

[redacted]

File Workers Defense League

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

FRANK SCHONFELD, et al.,	:	
Plaintiffs,	:	
-against-	:	OPINION
S. FRANK RAFTERY, et al.,	:	69 Civ. 1361
Defendants.	:	

- x

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FRANKEL, D. J.

The defendant Brotherhood of Painters, Decorators and Paperhangers of America provides in its Constitution for a network of regional district councils exercising a broad range of executive and legislative power over local unions within their jurisdiction. Defendant District Council No. 9 functions in this capacity in New York City. On October 19, 1966, after a turbulent history to be outlined below, S. Frank Raftery, General President of the Brotherhood, placed the District Council under a special trusteeship, naming John Damery, one of the Brotherhood's general representatives, as Special Trustee.

On April 6, 1967, the plaintifis, members (in most or all cases, for many years) of local unions affiliated with defendant District Council, filed this action to enjoin the continued functioning of the trusteeship, to prevent the Trustee from indefinitely postponing a scheduled election for the post of District Council Secretary-Treasurer, and for related relief. Invoking the court's jurisdiction under Sections 302 and 304 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 462 and 464, and under Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. §185, they charged that the trusteeship had not been imposed for a lawful purpose,
(3) but had been "established in fact for the purposes of consolidating the power of certain corrupt union officers, of dissipating the power and resources of the Council, and of preventing the growth of competing political elements within the Council, and of preventing the rank-and-file members of local unions composing the Council from cleaning up the corrupt conditions and practices that exist in the affairs of the Council."

Within a week after bringing the suit, plaintiffs moved on lengthy and detailed affidavits for a preliminary injunction. To sketch them only briefly here, the affidavits made, and documented, allegations that there had been long years of corruption in the District Council; a long tenure of tyrrancial repression by the Council's Secretary-Treasurer, Martin Rarback; management of the Council's affairs over many years for the personal interests of Rarback and his allies at the expense of the working membership; and a steady pattern of indifference or collusion by the Brotherhood despite numerous appeals by dissident individual members. The trusteeship had been imposed, plaintiffs asserted, only after Rarback had been indicted in New York the day before for bribery and collusion of the kind alleged here. Furthermore, plaintiffs under-
(4) took to show, the Trustee had done nothing to correct the evils in the District Council's affairs or to investigate the widespread charges of corruption and autocratic rule by its officers. Instead, it was charged, while he had suspended all the officers upon assuming the trusteeship, he had re-installed all of them except Rarback immediately, and had named Rarback shortly afterwards to a post of power and importance. It was alleged, in sum, that the trusteeship amounted to a "front" or "cover" for retaining control by the discredited - or at least seriously suspect - Rarback regime.

In a long opposing affidavit by the Trustee and a briefer one (incorporating the Trustee's) by General President Raftery, defendants denied stoutly that the trusteeship was anything but a good-faith and lawful measure to repair the parlous condition of the District Council. The Trustee reported a series of achievements during his tenure - revision of Council by-laws, an educational program, revitalized organizing efforts, a new (and impartial) Council newsletter, among other things. He swore to his own good faith and that of the Brotherhood in installing him. But the opposing affidavits left wholly or partly unanswered questions of a serious nature. What, if anything, had the Trustee done about the alleged problems of corruption? What
(5) investigation, if any, had he made before reinstating all the members of Rarback's administration other than Rarback himself? What had led to the new role of Rarback and how important was that role? How did it happen that after years of inaction, the indictment of Rarback had led to the instantaneous imposition of the trusteeship? To what extent had the procedures required by law been followed in declaring and continuing the trusteeship?

These and other unanswered questions to be noticed below posed issues of substance. It became clear that an evidentiary hearing would be required, and the court ordered one. With the acquiescence of the parties, the court invited the Secretary of Labor, through his Solicitor, to appear as amicus curiae. The invitation was accepted. Counsel for the Secretary attended the hearing, extending over seven court days, supplied some pertinent documentation, and have filed a post-hearing brief, for which the court is grateful although the Department's ultimate submission in favor of defendants is rejected. [1]

Since it was apparent that the ruling on the motion for a preliminary injunction was likely to be in effect the ultimate decision in the case, the court proposed for discussion that we proceed directly to the final adjudication in accordance with Fed. R. Civ. P., Rule 65(a)(2).
(6) Plaintiffs favored that course. Defendants opposed it. Recognizing its power under the cited Rule to order a final hearing on the merits, the court perceived no prospect of substantial gain in doing so over defendants' objection. Accordingly, whether or not it makes a real difference, the hearing was held solely for the purpose of the preliminary injunction application. Now, having studied the extensive record of factual and legal submissions, the court reaches the following findings, conclusions, and decision.

FINDINGS OF FACT

1. The pre-trusteeship situation

Since at least 1960, probably for a number of years before that, and up to the imposition of the trusteeship on October 19, 1966 (to stop there for the moment), District Council No. 9 was repressively governed, and the interests of its constituent union membership poorly served and frequently betrayed, under the dominance of Martin Rarback, its Secretary-Treasurer and chief officer,[2] and those allied with him in positions of power. Democratic procedures were ignored. The Council bylaws, of little moment to a dictatorial regime, were in a state of scattered disarray. Dissident members, seeking a voice in the management of Council affairs or an opportunity to vie for Rarback's office,
(7) were fought ruthlessly with all the power available to entrenched officials.

The Council's publication, the "District Council 9 News," served as Rarback's personal organ and propaganda outlet. It was used to vilify his opponents and trumpet his virtues at all (especially election) times. Opposition views were not seen in it except as Rarback purported to state, in order to refute, them. Appeals to the Brotherhood on this, as on many other subjects, were constant, and uniformly futile.

From 1953 on there was only a single election year, 1961, in which a candidate (plaintiff Schonfeld) managed to run the nomination gauntlet and stand as a candidate against Rarback. In order to be a candidate in the District Council election, an aspirant must win nomination by a vote in his local union. Among the devices employed by the Rarback forces to perpetuate his dynasty was the practice of having people in his camp compete for the nomination in their local unions. When such people obtained the nomination, as they did from time to time, they would obligingly announce that they were declining to run against the esteemed incumbent. Another Rarback stratagem was the use of transfers from local to local on the eve of elections to organize a favorable electorate.

When Rarback did for once face opposition, in the 1961 election,
(8) his opponent, Schonfeld, was confronted with a long, and probably critical, delay in obtaining the mailing list so that he might distribute campaign literature. Finally, eight days before the election, he was permitted to go to the offices of the Painting Industry Insurance Fund and copy the list there by hand. Not surprisingly, Rarback's

mailings, in envelopes typed probably (though not certainly) by Council personnel,[3] were sent to the membership before Schonfeld's.

Following the 1961 vote, and on numerous other occasions, Schonfeld and other dissidents appealed to the Brotherhood for correction or discipline based upon election and other irregularities. With rare and trivial exceptions, the appeals were rejected.

The aftermath of the 1961 election presented one of the repeated occasions when Rarback and his colleagues used the machinery of union discipline to wreak punishment upon dissenters. Schonfeld and some twenty of his supporters were charged with such offenses as unlawful resort to extra-union remedies and blemishing the union's good name. Denied the right of cross-examination and the right to produce witnesses (or testify) in their own behalf, they were convicted and ordered to pay substantial fines ($250 in Schonfeld's case). Appeals to the Brotherhood's General Executive Board were characteristically unavailing. On appeal
(9) to this court, as an incident of one of the numerous lawsuits members have brought to seek justice in the affairs of the District Council,[4] Schonfeld fared better. Enjoining enforcement of the punishments - in a decision later obeyed, and never questioned, by the District Council - Judge Murphy observed: "We are compelled to agree with plaintiffs' statement in its affidavit that 'if this be due process the moon is made of green cheese.'" Yochim and Schonfeld v. Caputo, 61 Civ. 2223, p. 3 (Oct. 24, 1962).

Apparently as a further response to the unaccustomed burden of a contested election in 1961, Rarback engineered a byLaw amendment before the 1964 election abolishing the long-standing requirement that members have their photographs in their union books, an obviously sensible and convenient means for checking questioned identity at the polling place. The result has been to facilitate the practice, vividly demonstrated to have continued into the Trustee's era, of stuffing the ballot boxes with fictitious votes. In June of 1965, in anticipation of pending local union elections, anti-Rarback candidates pressed for a system of control cards and a requirement that voters sign a register at the time of bal-
(10) loting. General Representative Altman, to whom the Brotherhood has steadily referred appeals and disputes from the District Council for supposedly impartial disposition, undertook to mediate on this occasion. The pro-Rarback people finally stated they would relent to the point of agreeing to either control cards or signatures. The dissidents, a number of whom believed that either device alone would be futile, retired to caucus. Agreeing to accept only signatures, they returned to take that offered alternative. The Rarback forces reneged. Altman, announcing that the dissidents were not really entitled to anything after all, walked out and left the situation unchanged.

The incident is illuminating in itself, but it is also illustrative. As noted above, General Representative Altman has functioned for some years as the ostensible giver of justice and voice of higher authority from the Brotherhood to District Council 9. Grievances have been "resolved" by reference to him from the Brotherhood's national headquarters. He has played his role repeatedly in one of two ways: (1) mostly, by passionate and intimidating support of the Rarback group, or (2) by professed inability to do anything about anything. And this gamut, from strident partisanship to ostensibly impotent
(11) "neutrality," has typified the Brotherhood's position over the years.

Among the incidents Altman has witnessed with apparent indifference have been at least one beating of a member attempting to be heard at a local meeting; the repeated silencing of opposition views at meetings; and blatant improprieties in local balloting. More positively, he has supported Rarback's objectives; attacked dissidents like the plaintiffs for such alleged subversion as making criminal charges (resulting in indictments) against the leadership; and personally engaged in intimidation, at the very time of voting, to insure an electorate favorable to Rarback.

While it has dealt harshly with members who were not compliant, the Rarback administration appears to have been an amiable one for at least many employers who have not been zealous to honor the rights of union members. Contract provisions governing hours, safety and other working conditions have been violated on a wide scale. Inspection and enforcement measures have lain fallow. Members who complained and protested have been "blacklisted" by employers, with no defensive or retaliatory measures being taken by the union. The prevalence of these conditions led the Trustee to concede that the District Council's of-
(12) ficials could not have been performing effectively on behalf of the membership.

One particularly disadvantaged group has been the hardwood finishers, of whom there are some 100 to 120 scattered through various locals of the District Council. The members of this group were unable under Rarback even to see the contract under which they worked. Complaints about their pay and working conditions were met with the rejoinder, among others, that they could join the carpenters' union, in which similar workers receive lower pay.

The whole pattern of lax and faithless representation has culminated in recent years in civil and criminal charges against Rarback that he was taking bribes and making collusive agreements with employers. The evidence in the present record goes far in the direction of supporting such charges. But there is no need to conclude now - and the court does not conclude - that they have been sustained. What is important and sufficient here has been the reaction - i.e., non-action - of the Brotherhood and the Trustee to a subject which should obviously be among the most profoundly disturbing ones a union can encounter.

In September 1965, upon leave granted in the preceding month by Judge Cooper, Frank Schonfeld, plaintiff here, and others brought suit
(13) in this court (65 Civ. 2695) against Rarback and his appointed Assistant Secretary-Treasurer, Morris Arber, charging that, by conspiracy and collusion with employers, they had agreed to overlook contract violations relating to members' pay and other conditions - in a current word, had entered into "sweetheart contracts." The suit has engaged the attentions of several judges here. Despite the detailed allegations of the complaint, defendants moved to dismiss it for its asserted failure to state a claim. Denying that motion on October 27, 1965, 52 Lab. Cas. ¶ 16,722, Judge MacMahon wrote:

> " * * * These allegations are detailed by supporting allegations of facts and acts and, therefore, constitute a sufficient showing of good cause for the issuance of Judge Cooper's ex parte order, lay an adequate basis for jurisdiction, and state a claim upon which relief may be granted. Nor do we find merit in defendants' contention that the complaint contains nothing but conclusions. On the contrary, the complaint alleges a wealth of facts and acts which plainly support a charge of conspiracy. The issues of fact raised by the complaint, however, are numerous and cannot, and should not, be determined upon a motion for summary judgment but must await full development of the facts upon a trial."

Since then, as the undersigned has had occasion to rule and may judicially notice from our files, Rarback has used every conceivable means, including violation of elementary procedural rules, to delay and
(14) obstruct preparation of the case for trial. When Rarback, on deposition, claimed his privilege against self-incrimination in response to questions about anything beyond his name - including questions as to his age and employment, although in his affidavit on file here in another action he asserts his role as Secretary-Treasurer of the Council - George Meany, AFL-CIO President, suggested an investigation by the Painters International President, Raftery, concerning possible violations of the

AFL-CIO Ethical Practices Code.[5] General President Raftery proceeded to call a meeting - to which was invited none of the 21 plaintiffs who had filed the complaint of "sweetheart" dealings, held by this court to state a valid claim - at the end of which he concluded that "the complaint involved no charges of misuse of union funds or corruption in any form."

In the meantime, both before and after the filing of the foregoing complaint, widespread charges of corruption against Rarback and other officers in his administration continued to be aired - in the public press, in publications printed and distributed by plaintiff Schonfeld and those allied with him, and in a flood of other litigation to which the Trustee refers as a disruptive factor justifying his assumption
(15) of control. Hearings held by a Senate Committee, with which defendants were familiar, developed evidence of "loans" totalling nearly $200,000 in 1960-1961 from one Jack McCarthy, a labor consultant and former union official, to Rarback and former District Council officer Frank Grattano. Whether properly or not, extensive publicity was given to the grand jury inquiries leading to Rarback's indictment on October 18, 1966.

It bears emphasis that the civil and criminal charges against Rarback, the publicity, and the testimony reported in Senate hearings are not treated by this court as proof of the charges against him. They are significant here, to repeat a point of some consequence, because of the demonstration in the record that the International did nothing to explore these vital subjects before the indictment and because the Trustee has done substantially nothing about them since his assumption of office except to suspend Rarback, then give him a key post with a trivial salary cut, and keep in office the whole of Rarback's team without investigating or pretending to judge their accountability for the Council's plight. These are circumstances, in the court's view, casting a glaring light both backward and forward - to the asserted good faith in ordering the trusteeship and to the validity of main-
(16) taining it and postponing indefinitely the election of a new Secretary-Treasurer. As has appeared and will appear, however, there is much more in the record to guide judgment on these matters.

2. The indictment and ordering of the trusteeship

As noted earlier, General President Raftery moved swiftly upon Rarback's indictment, ordering the trusteeship on the following day, October 19, 1966. Members of the Brotherhood's General Executive Board telegraphed (or, in one case, telephoned) their concurrence in this action. In a telegram to the District Council's officers - President Louis Caputo, Vice President Frank Bona, Nathan Flax, Senior Trustee, and Secretary-Treasurer Rarback - Raftery announced and explained this action as follows:

> "Pursuant to Section 47 of the Brotherhood Constitution, after careful investigation and with the approval of the General Executive Board, I am hereby placing District Council No. 9, New York, New York, under special Trusteeship effective immediately. In making this decision I have considered the following circumstances.
>
> "Beginning about September 1964 and continuing to date, repeated complaints have been lodged alleging collusive bidding, bribery of public officials and other irregularities in connection with the painting of public housing projects in the area coming within the jurisdiction of District Council No. 9, New York, New York.
>
> (17) "These complaints and allegations received widespread publicity in the daily press of the area which has tended to create an atmosphere of dissension

and controversy among the membership of the District Council and has adversely affected the good name, reputation and image of the Brotherhood, the District Council, the Affiliated Local Unions and the industry.

"Reports have been received that the Secretary of District Council No. 9 has been indicted by a New York County Grand Jury for conspiring to rig bids on Housing Authority contracts, that various contractors and Housing Authority officials have been indicted on one count of conspiracy, 42 counts of collusive bidding and 7 allegations of bribing public officials.

"It is the obligation of the Brotherhood under the provisions of the AFL-CIO Constitution and Codes of Ethical Practices to take appropriate action whenever such serious charges are made against any of the officers of one of its subordinate bodies.

"Without passing on the guilt or innocence of the Secretary of District Council No. 9 with respect to the charges contained in the indictments, it is my considered opinion that the foregoing circumstances have made it difficult if not impossible for the District Council to properly and effectively conduct its affairs and that the rights and interests of the members of District Council No. 9 and its affiliated local unions and the Brotherhood are likely to be placed in jeopardy unless immediate action is taken.

"Accordingly I have appointed General Representative John Damery, 335 Savin Hill, Dorchester, Massachusetts, as Special Trustee to take immediate charge and control of District Council No. 9 and its affairs in accordance with the provisions of Section 47 of the Brotherhood Constitution.

(18) "Pursuant to the requirements of Section 47(G) of the Constitution, a hearing will be held within twenty days at which interested parties may be heard on the subject of continuing the special trusteeship."

The LMRDA, Section 301, 29 U.S.C. §461, requires a report to the Secretary of Labor within thirty days after a trusteeship has been imposed, and semiannually thereafter. President Raftery signed such a report on November 19, 1966, and filed it with the Secretary.[6] The Secretary's form, to be supplied subject to criminal penalties for perjury, calls in item "7" for "applicable reasons for establishing or continuing the trusteeship." Four boxes are given, with the applicable one or ones to be checked as follows:

"☐ A. To correct corruption or financial malpractice

"☐ B. To assure the performance of collective bargaining agreements or other duties of a bargaining representative

"☐ C. To restore democratic procedures

"☐ D. Other (Specify):"

As submitted by Raftery, the verified form contains a check only for "B." Then in the space assigned for completing this item "7," the following addendum appears: "See telegram of S. Frank Raftery, General President,
(19) annexed." And the telegram quoted above, following a two-page financial statement, is annexed.[7] The omission of a check next to Reason "A" - "to correct corruption or financial malpractice" - is a datum of some interest notwithstanding the appended telegram referring to alleged problems of that

sort. It helps to illuminate the Trustee's testimony that in his view the problems of "corruption" were not his particular concern - that he thought it fit, for example, to leave charges of "sweetheart contracts" for the courts to explore and determine. It goes far to explain why, although he could not bring himself to reinstate Rarback to his formal position, he reinstated the entire roster of Rarback's cohorts without inquiry a day after their formal suspension."

3. The hearing and determination to continue the trusteeship.

In accordance with the International's Constitution and the General President's announcement of the trusteeship, a hearing was held on November 3, 4 and 9, 1966 as to whether the trusteeship should continue. Notice of the hearing was given to plaintiff Schonfeld among others. The transcript of the hearing, running 859 pages, was placed in evidence here by the defendants and has been examined with care.

(20) To judge from that transcript, the hearing was a somewhat wild, disorderly, and rambling business. Long speeches by Rarback (and by two lawyers representing him), his supporters, and his opponents wandered into personal histories, invective, and other unenlightening subjects. The hearing officer, advised by the International's General Counsel, evidently tried to steer an intelligible course, but failed notably, and in substantial measure because inadequate guidance was given as to the dimensions of the hearing or its supposed objectives. For example, the attorney for the District Council and the Trustee - who had represented the District Council and Rarback since 1963, and continued as counsel for the Trustee in this court - placed in evidence Rarback's indictment, gave a list of scores of pending and past lawsuits, and then succeeded in obtaining a ruling, repeatedly reaffirmed with somewhat rigid technicality, that matters touching the pending litigations should be excluded from evidence at the hearing. Since the lawsuits covered a broad range of the conflicts, problems, and alleged corruption in the Council, this remarkable ruling had the effect of excluding much that should have seemed patently relevant on the question whether a trustee was needed or should be retained.

(21) Despite its dubious management and character, the hearing appears to have been conducted in reasonable good faith as an approximate effort to achieve its constitutional objective. Bearing in mind the setting and the character of the participants - all of whom, except for Rarback, were laymen unaided by counsel - the court finds no defect in this procedure sufficient to warrant invalidation of the trusteeship.

Among the interesting facts developed in the hearing was the quotation - received without objection, later repeated here, and never disputed - of General President Raftery, a day or two after the imposition of the trusteeship, giving his view of Rarback. As thus quoted, he said: "I know Rarback as a strong, capable, competent leader in the New York area but I know nothing of his guilt or innocence of the charges brought against him."

On January 27, 1967, President Raftery distributed his written decision concluding that the trusteeship should continue. Reviewing the history, he recalled that from "September, 1964, and continuing to date, repeated complaints have been lodged alleging collusive bidding, bribery of public officials, and other irregularities in connection with the painting of public housing projects in that area within the jurisdiction of District Council No. 9." He spoke of the adverse publicity caused by these charges, affecting "the good name, reputation and image of the Brotherhood, the District Council, the affiliated Local Unions, and the industry." Concerning the indictment of Rarback and various contractors on October 18, 1966, he said: "Without passing on the guilt or innocence of Martin Rarback, it is clear to me that if the trusteeship had not been imposed, the indictment would have disrupted the administration of the District Council, widened the existing breach among and between members of the District Council, and further cast aspersions on the

(22)

reputation of the Brotherhood and its affiliates." He noted the failure to keep District Council bylaws in order. He recalled the existence of numerous lawsuits bearing upon alleged wrongful discipline, violation of members' rights to free speech, election irregularities and charges of libel and slander. He said: "What is indicated then, is not only membership unrest but lack of due regard for democratic process and procedure within the Council, a present threat to the collective bargaining agreements of the Council, and endless litigation which prevents effective administration." Referring to "sharp divisiveness within the District Council," - "political in-fighting" - Raftery said that dissident groups "had been all too often obstructive or destructive, rather than constructive." He concluded that majority sentiment favored the continuance of the trusteeship, and ended his written decision with this observation:

(23)

"The trusteeship is necessary to preserve and restore democratic procedures within the District Council, to protect and preserve its collective bargaining agreements, to erase any suggestion of taint or corruption and to carry out the legitimate objects of the District Council and the Brotherhood."

(23)

4. The Trustee's account of his stewardship and the proof on this subject.

In an initial 44-page affidavit, supplemented by two further affidavits and later by extensive live testimony, the Trustee, John C. Damery, was relied upon for substantially the whole of defendants' case defending the trusteeship against the serious charges and substantial proof submitted by plaintiffs. Much of his affidavit - concerning the reasons for imposing the trusteeship, a matter in which he had no personal part - was patent hearsay. The significant failure of defendants ever to adduce competent proof on this subject is noted again below. Here, however, our primary concern is with the things Damery told of his own knowledge and what the evidence showed on these subjects.

(24)

The trustee stressed at the outset of his affidavit his instant suspension of Rarback and the other officers upon assuming the trusteeship. Those other than Rarback, he said, were reinstated ("s)hortly after." More precisely, the evidence showed that all were reinstated within 24 hours, with no investigation, either before or after, of their roles in aiding Rarback's oppressive regime, in condoning the admitted mismanagement of the Council's affairs, in the long history of unenforced contract protection, or in any of the facts leading to charges of "sweetheart contracts" and other corruption.

8

As to Rarback, the Trustee's opening affidavit said there had been "an outpouring of appeal and protest" over the suspension. Moreover, the General President had been moved by the unfairness of depriving Rarback of his livelihood at a time when he had the burden of meeting unproved criminal charges. "Accordingly, on December 2, 1966, the Trustee, on instructions of the General President, assigned to Rarback (at a salary less than he had earned as Secretary-Treasurer) the task of coordinating the New York City organizing campaign." 9 The new position, the Trustee stressed over and over again, had no special title, little power, and placed Rarback under the close supervision of the Trustee. Rarback was required, he said, to submit weekly reports of his activities. These reports were not volunteered as evidence, but were produced at the court's direction and proved, as will appear hereafter, to be sources of considerable illumination.

(25)

As to the title of Rarback's new post, the Trustee's testimony was false. The issue is perhaps of secondary importance in itself, but it begins a train of evasive, misleading, and plainly untrue testimony for defendants. Plaintiffs asserted, and undertook to prove, that Rarback had in his new position the impressive title of "Coordinator of Education and Organization." 10 The Trustee denied that there was any such formal designation. But it appears repeatedly in the Council minutes, signed by

the Trustee. Rarback's weekly reports to the Trustee, so much stressed by defendants, are signed by him as "Coordinator." The file in which they were brought to court is labelled "Coordinator's Report to International." The auditor's report of Council salaries for the period ending December 28, 1966, shows "Organizing Co-Ordinator M. Rarback" at the head of the list.

(26) To emphasize Rarback's continued role of leadership under a new facade, plaintiffs offered a document entitled "Program of the Organizing and Educational Department of New York City District Council No. 9," and sought the Trustee's admission that this was Rarback's handiwork. Not so, said the Trustee; it was a joint product, with himself and others sharing authorship, and with Rarback, now subordinated, only one of the participants. But Rarback's weekly reports, produced on demand, gave the lie to this. The very first one, except for one or two typographical errors, later corrected, showed Rarback to be the sole author, precisely as plaintiffs had claimed and as the rest of the membership undoubtedly was led to understand.

Plaintiffs complained that Rarback, equipped with his new title, was continuing to use his position in well publicized appearances at union meetings to attack his opponents, seek financial support for his defense, and otherwise display his continued power. Combining equivocal testimony with professed righteousness, the Trustee gave unimpressive evidence on this general subject. Rarback's evenings, he said, outside office hours, were his own, unofficial time. But Rarback's official reports to the Trustee, presumably on business, tell repeatedly of his speeches and appearances at local meetings, at least some of which were attended by the Trustee himself. The Trustee could not know or much care, he said, (27) how the locals "billed" Rarback's appearances. But quaere how this squares with the stated determination to suspend and subordinate the Secretary-Treasurer.

In one respect, however, defendants' uncontradicted testimony sustains their version of Rarback's activities on local rostrums. It appears that the General President did in fact order Rarback early this year to separate his official functions from his appeals for help in his personal defense.

There is more, and more important, evidence, however, refuting defendants' efforts, and the Trustee's testimony, designed to trivialize Rarback's current position. His weekly reports show that he exercised considerable authority over business agents in the central work of organizing and picketing. They show that representatives of key employers continue to deal with him as the effective negotiator and decider, whether or not his decisions need the formal imprimatur of the Trustee. They show that plaintiffs are correct in their assertion that Rarback's continued dominance, and anticipated resumption of the post for which the Trustee has indefinitely postponed an election, must be plain for anyone to see.

In cataloguing his allegedly extensive achievements during the (28) six months or so of his tenure preceding the hearing, the Trustee emphasized that he had corrected the undemocratic condition of the Council's news publication, agreeing that it had formerly been a one-sided organ for Rarback's own uses. The old publication, he swore, has been replaced by a new and impartial one, "published by the Trustee" and under his "control and auspices." What he did not mention - but the evidence at the hearing, including Rarback's reports, revealed - was that the author of the new publication, subject to the editorship of the Trustee, is none other than Rarback himself.

It is not surprising, therefore, that the first issue of the revised "DC 9 Newsletter" carried as its first item a prominent story lauding the new "Organizing and Educational Drive" - Rarback's enterprise - "as a pilot project, that may point the way for strengthening the organization throughout the country." The message, giving national significance to Rarback's role, could easily have told an innocent reader that Rarback's new post was, if anything, loftier than the one from which he had been suspended.

Stressing his asserted impartiality, the Trustee stated several times that he had no initial intention to give Rarback a position during his suspension. The point of this testimony seemed questionable on its face since the Trustee had sworn that the restoration of Rarback to the Council payroll had been "on instructions of the General President * * *." But defendants built upon the Trustee's profession of good intentions by introducing a long series of letters, purportedly from officials of locals affiliated with the District Council, appearing to urge or approve a place for Rarback. Many of the letters were dated after the event, a number after the commencement of this lawsuit. The Trustee, through whom they were introduced, could not identify the writers or their signatures. The letters were received only to show the Trustee had received them. In response to this ruling, the Council's attorney announced the availability of the various writers, presumably to show the "outpouring" of popular pressure on Rarback's behalf. No such witness was ever called to the stand.

In an evident effort to discount his prompt reinstatement of the whole Rarback regime, the Trustee repeatedly contradicted plaintiffs' testimony that Morris Arber, Rarback's codefendant in the suit charging sweetheart dealings, had served for years as Rarback's appointee in the position of Assistant Secretary-Treasurer. At least, the Trustee said, if this was so, he had not heard about it. In the trusteeship hearing, however, at which the Trustee was an interested and steady attendant, Arber was repeatedly referred to as assistant secretary - by himself, by Rarback, and by at least one other speaker. The back issues of the "District Council 9 News" - perused by the court and said by the Trustee to have received his careful study - contain numerous references of the same kind. The National Labor Relations Board, though concerned primarily with a different problem, also described Arber as "Assistant Secretary-Treasurer of District Council No. 9." John Langenbacher Co., Inc., 161 NLRB No. 20, Trial Examiner's Decision, p. 3 (1966). In short, it seems that everyone who knew about the District Council knew Arber's position, except the Trustee. Surely, his counsel in this court, the same attorney who had represented the District Council since 1963, cf. Tucker v. Shaw, ____ F.2d ____, ____ (2d Cir., May 31, 1967), must have known the facts when he presented the Trustee's affidavit denying Arber's possession of the title so uniformly attached to him.

It is enough to say on this subject that the Trustee either testified falsely or revealed a total ignorance of a fact basic to his functioning if he was in truth bent upon probing and curing the District Council's maladies. In either event, his testimony gives striking clues on the question of the alleged good faith behind the establishment and maintenance of the trusteeship.

By private, painstaking, personal investigations, reported in testimony the court finds wholly credible, the plaintiffs proved that the practice of electoral frauds has continued into the period of the trusteeship. They reported careful counts of all those attending local elections in a District Council referendum during March of this year. The evidence showed that the reported votes for the "administration" position on the referendum far exceeded the number of those who had appeared at the polling places. In his affidavit, the Trustee complained that plaintiffs had not reported these things before this lawsuit and that this was his first inkling of the alleged irregularities. The matter is to be investigated, he stated, with the investigation of a months-old election still in the future when this court's hearing ended. And, he swore, "a check has been made with the local union officers who denied the allegations categorically."

The Trustee's ignorance of the facts, found here to be facts, requires no comment. His hearsay assertion about what local officers said is followed by a record of live testimony in which no single officer was called by defendants to document the statement.

The evidence also indicates that due process has not flourished under the Trustee. In December of 1966, a trial board appointed before the Trustee's arrival by Caputo, Rarback's aide, imposed heavy fines

(of $300 each) upon members charged with infractions of union discipline. Appeals within the organization were futile. It was only after a New York County assistant district attorney stressed to the Trustee his view of the proceedings as grossly unfair that the Trustee acted to suspend the punishments.

Another revealing instance of how the Trustee has functioned is in the testimony relating to the hardwood finishers. As has been mentioned, the substantially undisputed evidence showed a record of high-handed, abusive, and faithless treatment of this group by the Rarback administration. Early in the Trustee's supervision, a representative of the group, speaking for over half of them, undertook to meet with him and explore their problems. The Trustee stalled at length, then determined that he would meet only with "official" representatives designated by the various locals in which the finishers were scattered. He sent out a call, he testified, for the locals to name representatives to such an official body. To his chagrin, he further stated, hardly any local had responded. As our hearing ended, he was still waiting patiently, still refusing "unofficial" meetings, and still unaware of,
(33) or indifferent to, the fact that his ostensible reliance was upon local officials who had ignored or discriminated against the finishers for years. This evidently remains until now the posture of a problem that has led to the grave charges of collusive bargaining in this court's pending case of Schonfeld v. Rarback, 65 Civ. 2695, to which reference has been made earlier.

In the peroration of his original affidavit (p. 42), the Trustee said: "The Trusteeship is necessary to preserve and restore democratic procedures within the District Council, to protect and preserve its collective bargaining agreements, to erase any suggestion or taint of corruption and to carry out the legitimate objects of the District Council and the Brotherhood on behalf of the membership." In their reply brief, after the hearing, defendants concluded (pp. 1-2), citing the Raftery telegram of October 19, 1966, "that the allegations of collusive bidding, bribery of public officials and other irregularities in connection with the painting of public housing projects and the fact that the Secretary-Treasurer of District Council No. 9 had been indicted * * * constituted the main bases for the imposition of the Trusteeship." This late assertion of the "main bases" contrasts sharply with the sworn statement, which left unchecked the box next to "corruption
(34) or financial malpractice," submitted to the Secretary of Labor. More importantly, it is irreconcilable with the way the Trustee has performed his role and testified about it. Charges of collusive contracts, he says, though dating back to 1964, must be left for the courts to resolve in pending lawsuits. Though they go to the heart of the long-standing problems of the Council, the pending charges against Rarback have likewise been treated as outside the Trustee's domain, the asserted reason being a supposed concern for the rights of Rarback as a defendant in court. Similarly, all of Rarback's colleagues stay on in positions of control. There have been no charges against them, the Trustee says; for example (Original Affidavit, p. 29): "Caputo was not under indictment and there is no evidence of culpability to warrant a deprivation of job employment to Caputo." On such bland premises, with the Trustee uninterested in seeking relevant evidence, serious questions remain unexplored and unanswered.

As to his professed primary duty of correcting the undisputedly undemocratic practices in the District Council, the Trustee on the stand took a remarkably "impartial" view. He came here, as he saw it, to moderate a destructive "power struggle." With Olympian detachment, he has held the contending forces to the territory they occupied
(35) when he arrived. As his original affidavit put it (p. 43), the Trustee "has no interest or inclination to favor any side, pro or anti Rarback."[11] The result has been, of course, to keep the entrenched people in power and to hold at bay those who have fought the lawless administration.

This ungainly posture of supposed "neutrality" is nowhere better illustrated than in the Trustee's colorless catalogue in his affidavit of the many lawsuits over District Council affairs. Carefully

and quaintly avoiding any conclusions as to the right and wrong, he merely lists the cases, with cryptic references to their subject matter, presumably to show there is "strife" requiring his presence. He lists, for example, Salzhandler v. Caputo, 316 F.2d 445 (2d Cir.), observes correctly that certiorari was denied in that case, 375 U.S. 946 (1963), and says it was about "the principle of free speech * * *." He does not mention that the action of the trial board in that case, constituted by those still in power, was denounced in the end as violating the principle of free speech. He refers to Yochim and Schonfeld v. Caputo, 61 Civ. 2223, discussed earlier in this opinion, but does not mention the blatant violation of due process found by Judge Murphy in that case. Characteristically, the "merits" are of no interest to him.

(36) In sum, although his mission purportedly includes the restoration of democratic processes in the Council, the Trustee has revealed that this objective amounts to "window dressing" to all practical intents and purposes. In these circumstances, the Trustee's decision - said by him to have been made jointly with Raftery - to allow an election at the end of this month only for offices other than the Secretary-Treasurer's is revealed as part of a larger plan to maintain the political status quo in the Council with the least possible disturbance and without genuine reform. The "freeze" the Trustee has ordered, considered in the light of the way he has handled his stewardship, makes his role in effect one of caretaker for the Rarback forces. The reinstatement of Rarback to a strategic post reenforces this effect. Together with the retention of the whole Rarback apparatus of personnel, it makes probable the return of a Rarback slate to all the places under the one from which Rarback stands suspended. For the membership, long accustomed either to obey or face the retaliatory power of those in charge, will be reluctant to attempt rebellion against a group now at the helm with the apparent strength of the Brotherhood behind them.

5. Concerning the "autonomous" locals

In addition to urging that the trusteeship should be enjoined and that an election should be ordered for the post of Secretary-Treasurer, plaintiffs contend that the members of the so-called "autonomous" locals should be excluded from any such election. Their claim is that such locals have been added to the District Council by Rarback to secure his position in elections; that they are in fact largely independent of the Council and its officers; and that they contribute only a minute and disproportionately small per capita share of the Council's funds. Their claim is not without substance, but the proof, at least in this preliminary stage of the case, is insufficient.

The Brotherhood's Constitution provides that locals in trades allied with painting and paperhanging - glaziers, scenic artists, sign painters, etc., - shall have a large measure of autonomy over their wage rates and other affairs. It also contemplates, Sec. 224(a), that such "autonomous" locals "must be represented in and shall be governed by the rules" of the District Council with territorial jurisdiction over them. The autonomous locals here in question fall under the jurisdiction of District Council No. 9 within the contemplation of the relevant constitutional provisions.

(38) Plaintiffs did produce a witness to whom Rarback, in 1951, had allegedly related his plan to seek power by relying, among other things, upon the votes of autonomous local members. There was, however, no direct evidence beyond this remote episode to sustain plaintiffs' central thesis. Plaintiffs also undertook to show by an analysis of a quarterly auditor's report that the "affiliated" locals, paying to the Council a $5 per month per capita tax, contribute more to the Council's general support than do the autonomous local members, who pay a ten cent per month per capita. It was shown, however, that major expenses borne by the autonomous locals for themselves are paid by the District Council for affiliated locals. Similarly, many functions performed by the District Council for the affiliated locals are performed by the autonomous locals

for themselves. In the last analysis, the disproportion claimed by plaintiffs has not been established.

This is not to say that the evidence adduced by defendants on this subject was impressive. They called one of their accountants, who did much to dissipate the effect of plaintiffs' non-expert testimony, but was unprepared himself to answer the key question as to the disproportion. Although the pertinent information is peculiarly available to defendants, they failed to develop it persuasively.

(39) Nevertheless, the burden is plaintiffs', and they have not sustained it. The result might be different on a fuller hearing, perhaps at a stage later than this preliminary injunction application. At this point, however, the evidence is insufficient to justify the findings and the resulting drastic relief plaintiffs seek.

6. General observations concerning the character of the evidence and the state of the record

It may help to explain the court's findings and conclusions if an explicit record is made, even at the cost of repetition, of some pervasive underlying factors.

For the most part, the evidence offered at the hearing by the plaintiffs in support of their serious charges against Rarback, his fellow officers, and the Brotherhood was clear, consistent, careful, and highly credible. These characterizations apply with special emphasis to the testimony of plaintiffs Schonfeld, Blum, and Papson, comprising the bulk of the case against defendants.

On the other hand, as has been noted, the Trustee was poorly informed, evasive, and, too often, plainly incorrect. His performance becomes a critical factor against defendants because of the odd judgment that their entire case in the live hearing could be rested upon him.
(40) The judgment is advisedly described as "odd" in that, as noted earlier, he could give no competent testimony concerning the central issues as to the motives and judgments leading to imposition of the trusteeship. Indeed, he made this point more than once on the stand in an apparent effort to justify his vagueness about the purposes of the trusteeship. Evidently recognizing this when they prepared the Trustee's initial affidavit with its hearsay account of these vital subjects, defendants included in their papers an affidavit of President Raftery, who swore briefly that he had read and agreed with what the Trustee said. But when the issues posed by the papers came on to be tried, neither Raftery nor anyone else with personal knowledge was brought to testify and face cross-examination.

As was noted earlier, defendants chose to leave similar vacuums, leading to similarly compelling inferences, on other aspects of the case with respect to which they had tendered paper issues. In the end, they left wholly uncontradicted the demonstration of election frauds under the Trustee's administration. And they failed to fulfill their forecast that the acclaim for Rarback's installation as "Coordinator" would be shown in competent evidence at the hearing.

The record as a whole, even apart from the thoughts of fiduciary
(41) responsibility prompted by the very notion of a "trusteeship," leaves the court with a sure conviction that defendants lacked legal justification for the course they followed.

7. Primary factual conclusions

To summarize them in terms of the pertinent law, the court's main findings on the issues presented are as follows:

a. The proof is clear and convincing that the Brotherhood has

not proceeded in good faith, for any one of the purposes authorized by law, either in establishing or maintaining the trusteeship. The case is difficult on its face because there existed in the affairs of District Council No. 9 ample grounds for imposing a trusteeship. They existed long before October 19, 1966, when the Trustee was installed, with the full knowledge and acquiescence of the Brotherhood. As defendants say, the indictment of Rarback "triggered" the trusteeship declared on the following day; but even then, as revealed by the actions of the Trustee and the silence of the responsible Brotherhood officials, there was a fatal divergence between the available or asserted justifications and the real grounds for the action.

(42) b. The Brotherhood's President proceeded with considered forethought when he omitted to check on the sworn statement to the Labor Department the factor of corruption and the need to restore democratic procedures as reasons for establishing the trusteeship. The striking omission was not cured by the ambiguous device of appending to the statement his ambiguous telegram announcing the decision. Defendants' later insistence in this lawsuit upon the omitted factors serves only to highlight and aggravate the studied vagueness with which they acted.

c. The primary reason for establihsing the trusteeship was to maintain the status quo in the Council as nearly as possible and thwart the efforts of Rarback's opponents to achieve power by democratic means. The Trustee has functioned as an efficient and useful administrator of many of the Council's day-to-day affairs, but has scarcely touched, because he was not intended to touch, the basic evils and unresolved charges that could have justified his role.

d. There is no sound basis in fact for the Trustee's judgment that every office but the main one of Secretary-Treasurer should be open for contest in the forthcoming election. There are knowledgeable and experienced candidates seeking the office. The device of keeping it
(43) open, with its powers ostensibly continuing to be exercised by the Trustee, serves no positibe end, but is calculated to impair the revival of truly democratic administration.

e. The Trustee's course will have the effect, moreover, of perpetuating the power of Rarback's adherents, all of whom have retained their offices under the Trustee.[12] This likely result is enhanced by the Trustee's action under orders from the General President, installing Rarback in a post of prestige and authority.

f. The Trustee has shown no interest or disposition to investigate promptly and correct election frauds within the District Council. As a result of his inaction, such frauds have characterized the only voting (on a referendum) shown to have occurred during his administration.

g. The evidence is insufficient at this stage to show that the autonomous locals have been employed, contrary to the Union's Constitution, as devices for perpetuating the power of Rarback and his adherents.

(44) CONCLUSIONS OF LAW

1. The court has jurisdiction of this action to oust an allegedly unlawful trusteeship by appropriate injunctive relief.

Section 304(a) of the LMRDA, 29 U.S.C. §464(a), provides:

> "(a) Upon the written complaint of any member or subordinate body of a labor organization alleging that such organization has violated the provisions of this subchapter (except section 461 of this title) the Secretary shall investigate the complaint and if the Secretary finds probable cause to believe that such violation has occurred and has not been remedied he shall, without disclosing the identity of the complainant, bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate. Any member or subordinate body of a labor organization affected by any violation of this subchapter (except section 461 of this title) may bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate."

A few decisions have held that the statute requires exhaustion of the remedy offered through the Secretary of Labor before any "member or subordinate body" may proceed in court. Cox v. Hutcheson, 204 F. Supp. 442, 446 (S.D. Ind. 1962); Flaherty v. McDonald, 183 F. Supp. 300, 304-306 (S.D. Calif. 1960); Rizzo v. Ammond, 182 F. Supp. 456, 472 (D. N.J. 1960). But neither the language of the statute nor its history will bear this
(45) construction, as is shown by the weight of entirely convincing authority. United Brotherhood of Carpenters v. Brown, 343 F.2d 872, 880-881 (10th Cir. 1965); Executive Board v. International Brotherhood of Electrical Workers, 184 F. Supp. 649, 655-59 (D. Md. 1960); Hotel and Restaurant Employees v. Del Valle, 328 F.2d 885, 886 (1 Cir.) cert. denied, 379 U.S. 879 (1964); Parks v. International Brotherhood of Electrical Workers, 314 F.2d 886, 923-24 (4th Cir.), cert. denied, 372 U.S. 976 (1963); Forline v. Helpers Local No. 42, 211 F. Supp. 315, 319 (E.D. Pa. 1962); Vars v. International Brotherhood of Boilermakers, 204 F. Supp. 245, 246-47 (D. Conn. 1962). The Labor Department appears to agree with the obviously sound view of the latter authorities. See Union Trusteeships, supra, note 12, p. 5. And defendants do not press with vigor their contrary suggestion.

It is sufficient to refer to, without repeating here, the thorough analysis by Judge Watkins in Executive Board v. International Brotherhood of Electrical Workers, supra, demonstrating that plaintiffs are plainly correct in their jurisdictional argument.

2. The formal procedures establishing the trusteeship were lawful.

Section 304(c) of the LMRDA, 29 U.S.C.§464(c), provides in
(46) pertinent part:

> "(c) In any proceeding pursuant to this section a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution or bylaws shall be presumed valid for a period of eighteen months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 462 of this title."

Plaintiffs contend that the presumption of validity for eighteen months is unavailable to defendants for three reasons:

(a) Because the trusteeship was not established by the Brotherhood "in conformity with the procedural requirements of its constitution and bylaws * * *."

(b) Because the hearing of November 3, 4 and 9 was not a fair one.

(c) Because the hearing was not "before the executive board or before such other body as * * * provided" in the Brotherhood's Constitution.

While at least the second of these arguments is substantial, the court has concluded that all three must be rejected.

(47) a. Plaintiffs assert that the Brotherhood Constitution, Section 47, authorizes trusteeships over local unions, but not over district councils. Defendants are correct in their short answer that subsection (i) makes the provisions of Section 47 applicable "with equal force and effect to District Councils and other subordinate bodies of the Brotherhood."

b. A more difficult question is posed by plaintiffs' charge that the trusteeship hearing was not fair - specifically, because of the large areas excluded by the rulings of the Hearing Officer under the guidance of the Brotherhood's General Counsel. As the court has indicated earlier, the rulings were indeed erroneous in barring discussion of anyting involved in the mass of pending litigation, and thus foreclosing, in theory at least, the great bulk of the District Council's bitter problems. In some measure, the rulings undoubtedly reflect some of the studied ambiguity attending President Raftery's explanation of the reasons for appointing a trustee. Nevertheless, having in mind that the standards of due process for a lay tribunal are undoubtedly less nice than those governing the courts, it cannot be said that the truncated quality of the hearing should in itself defeat the trusteeship. The exclusionary rulings were not meticulously enforced. In the course of the somewhat
(48) rambling and hectic proceedings, many of the grievances and disputes received at least a partial airing. Enough was developed so that the deciding authority, if bent upon a determination in good faith, might have been deemed adequately informed for that purpose.

There is a certain artificiality, of course, in judging the fairness of the hearing in isolation from the rest of the case. The court has done so, however, in order that the several factors for decision may be stated with a decent approach to clarity. Having done so, the court holds that if the complaint about the adequacy of the hearing stood alone, the relief plaintiffs seek would be denied.

c. Because the hearing was before a single officer, plaintiffs say it violated the statutory requirement of a "hearing either before the executive board or before such other body as may be provided" in the union constitution or bylaws. The notion of a "body," plaintiffs argue, is not satisfied by a one-man tribunal, so that neither of the statutory alternatives was satisfied. The argument is plausible in strictest dictionary terms, but it cannot prevail in the end.

(49) There is no question that the designation of a single hearing officer conformed to the Brotherhood's Constitution, Section 47(g). There is likewise no question that a hearing of this sort, familiar in the workings of official tribunals, contains no basic defect offensive to due process requirements. See Utica Mutual Insurance Company v. Vincent, 375 F.2d 129 (2d Cir. 1967). And it seems clear, whatever the awkwardness in the use of the word "body," that such a formally authorized procedure fulfills the essential requirements of Section 304(c), LMRDA.

As originally proposed, the predecessor of this provision, S. 505, 86th Cong., 1st Sess., Sec. 204(c) (1959), would have made the presumption available only if the trusteeship had been "authorized or ratified by the executive board or similar governing body of the labor organization." [13] As the section was reported, however, the phrase "similar governing body" was replaced by "such other body." [14] In the course of making this and the other revisions leading to the final form of the section, the draftsmen had before them authoritative information that it was common practice for the president of an international union to order "a hearing before him or his deputies, with there being a subsequent right of appeal to the executive board." [15] And the Senate Report on the presently pertinent language as it was ultimately passed
(50) described the purpose "to make it plain that an honest decision by the international officials is not to be overturned during the first 18 months of the receivership upon a question of fact or of degree or of judgment as to the necessity for imposing it." [16]

When the history and purpose are examined, it seems clear that only an arid literalism would be served by outlawing the Brotherhood's perfectly apt constitutional procedure because a single officer is not normally referred to as a "body."

In sum, while the court rules in plaintiffs' favor on the substantive basis next considered, their procedural arguments against the trusteeship and the presumption of its validity have not been sustained.

3. The record supplies clear and convincing proof that the trusteeship was not established, and has not been maintained, in good faith for a lawful purpose. This conclusion follows, of course, from the findings recorded above. As was stated there, the conditions existing in District Council No. 9 for at least several years before October 1966 would probably have justified a good-faith trusteeship for one or more of the purposes validated by Section 302 of the LMRDA, 29 U.S.C. §462, which provides:

(51) "Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization."

The evils to which these lawful purposes relate were the subjects of constant complaints to the Brotherhood during the several years before the Trustee was named. The complaints were almost uniformly futile. The Brotherhood knew of, and tacitly condoned, Rarback's arbitrary methods, his effective quelling of protest, his dictatorial control of the Council's news publication, and the widespread indications of possible corruption. Nothing was done until Rarback was indicted.

Then, overnight, the Trustee was named.

While there might be plausibility in the Trustee's explanation that the indictment simply "triggered" a righteous explosion to which events had in any event been building, the record as a whole compellingly refutes this explanation. The Trustee's stance of "impartiality" between Rarback and his opponents, the bland re-installation of the Rarback team, the new assignment to Rarback and the false and evasive testimony about it, the whole pattern of inconsistent and equivocal explanations -
(52) all point to the conclusion that there has been bad faith, not good faith, that the trusteeship was imposed to keep the entrenched group in power rather than for one of the allowable purposes.

This conclusion, convincingly demonstrated with respect to the Trustee's activities, applies equally and inescapably to the determination creating the trusteeship. Apart from all the other evidence, the absence of testimony from Raftery or anyone else responsible for the establishment of the trusteeship reflects a striking and calculated decision to curtail obviously pertinent inquiries. To be sure, plaintiffs had a heavy burden of proof - to make "clear and convincing" the claimed invalidity of the trusteeship. But it might have been supposed - the Congress must be deemed to have supposed - that the statute "would require the international officer to justify such action (ordering a trusteeship) when it becomes necessary * * *."[17] And it ought certainly to have seemed "necessary," in the face of the damaging picture developed by plaintiffs, to have tendered explanations from those whose good faith was directly in issue.

Giving due weight to the inference from the Brotherhood's silence, the evidence as a whole sustains the burden plaintiffs assumed.

(53) 4. The appropriate remedy is to postpone the partial election now scheduled, order a supervised election for all offices, including that of Secretary-Treasurer, and then terminate the unlawful trusteeship.

Upon the findings heretofore made, the election scheduled for June 24, 1967, excluding the office of Secretary-Treasurer, would entail unfair advantages for the discredited Rarback group. Since it is held that the post of Secretary-Treasurer should be included among those to be contended for, and since the period before June 24 is too short for nominations, let alone campaigning, the plainly required course is to postpone the entire election. Following consultation with the parties,[18] and subject to further orders as may be required, the date for the election thus postponed will be September 16, 1967.

As has been found, the history of District Council elections, extending into the period of the trusteeship, has been marked by fraud and other irregularities. Provision should be, and will be, made to guard against such happenings in the forthcoming election. There is no serious question raised as to the power of the court to effectuate its decree in this way. The LMRDA, Sec. 304(a), 29 U.S.C. §464(a), provides
(54) in familiar terms for "such relief (including injunctions) as may be appropriate." The flexible relief available in equity is an old story. It plainly extends, as will the order herein, to supervision by an impartial officer or agency over a court-ordered election. Boggia v. Hoffa, 41 CCH Lab. Cas. ¶16,731 (E.D.N.Y.), modified and affirmed, id., ¶16,732 (2d Cir. 1960); cf. English v. Cummingham, 269 F.2d 517, 521 (D.C. Cir.), cert. denied, 361 U.S. 897, 905 (1959); and see Summers, Judicial Regulation of Union Elections, 70 Yale L.J. 1221, 1253-56 (1961).

There is no invasion by such a provision of the exclusive jurisdiction reserved to the Secretary of Labor under Title IV of the LMRDA, 29 U.S.C. §§481-82. See Calhoon v. Harvey, 379 U.S. 134 (1964). The basic relief here is the invalidation of the trusteeship, found to have been unlawfully established and maintained. The election to be ordered is "appropriate" as a corollary and incident of the primary relief to be granted.

As has been mentioned, nominations for District Council offices are made in the local unions, with an election in any local where there is competition for a candidacy. Thus, the votes for contested nominations are an integral part of the election process leading to the designation
(55) oa a Secretary-Treasurer. It follows that the supervision to be ordered will apply to the election in any local where there is a contest for the nomination for Secretary-Treasurer.

The entire election process, including any such contested nominations, will be supervised by the American Arbitration Association (A.A.A., 140 West 51st Street, New York, N.Y. 10020, and will be subject to that agency's election rules, except to the extent that any of them may be inconsistent with the terms of the court's order or applicable law. In

the election to be scheduled for September 16, 1967, the A.A.A. will arrange for the counting and tabulation of the votes separately for each local union. The election results will be certified to the court, whereupon a further order will be settled enjoining the continued functioning of the Trustee and encompassing such other and additional relief as the circumstances may then justify.

The costs of the A.A.A's supervisory services, for reasons which have been canvassed at some length with counsel, will be borne in equal shares by the defendant District Council and the defendant Brotherhood. On or before August 21, 1967, these defendants will deposit with the A.A.A. the sum of $2,000 as partial payment toward the total of such costs.

(56) Pending the election and installation of the Secretary-Treasurer, with the concurrence of the parties, the Trustee will remain in his current status, subject, of course, to further orders of the court if any are necessary. The Trustee will supply to the A.A.A. and the parties such information and assistance as may reasonably be requested to ensure orderly preparation for, and conduct of, the election process. He will, for example, publish and distribute appropriate notices and information; make available, conveniently and impartially, membership lists for the distribution of campaign literature; and proceed in other suitable ways to further the objective of a fair and open election. Should the incumbent Trustee become unavailable during this interim period, the Brotherhood will be responsible for the appointment of a successor within 48 hours giving prompt notice of such appointment to the court and counsel for the parties.

While some particulars have been mentioned, the court deems it unsuitable and unnecessary to attempt now to prescribe in minute detail the procedures to be followed and the obligations of the parties in administering such procedures. As has been emphasized in conferences with
(57) counsel, further details of compliance are left to the parties in the expectation that mutual good faith and cooperation will obviate the need for any substantial degree of additional intervention. The principles to be observed and the objective to be sought in the election process ought to be clear enough. Experienced counsel should be able to collaborate effectively toward the fair and faithful implementation of the court's order.

If this expectation should fail, the court will be open to resolve such problems or controversies as may arise during the time for compliance.

5. The evidence, as found above, does not sustain plaintiffs' claim that the autonomous locals have participated unlawfully in District Council elections and should be excluded from the election scheduled for September 16, 1967. Accordingly, the members of these locals will be entitled to vote as they appear to have done since 1951.

Having found the facts on this issue against plaintiffs, the court has deemed it unnecessary to close definitively with defendants' contention that the matter is outside our jurisdiction in any event. It may be noted, however, if only as a tentative conclusion, that there
(58) seems to be merit in plaintiffs' theory that their effort to exclude the autonomous locals is within the court's pendent jurisdiction. Cf. Libutti v. Di Brizzi, 343 F.2d 460,461 (2d Cir. 1965). Thus, the disposition at this stage is without prejudice to any claims plaintiffs may press on this subject at some later point in the lawsuit, although it should be acknowledged that their position after the election may be decisively affected by the exclusivity provisions of Title IV, LMRDA, 29 U.S.C. §483. Robins v. Rarback, 325 F.2d 929 (2d Cir. 1963), cert. denied, 379 U.S. 974 (1965). By the same token, nothing decided now will preclude any appeal plaintiffs may deem warranted under that Title to the Secretary of Labor.

Pursuant to our agreed schedule, counsel will serve and file proposed orders on June 20, 1967, with a view to the court's determination of any controversies on that score and entry of its order on the following day. [19]

MARVIN E. FRANKEL

Dated: New York, New York
June 16, 1967

U.S.D.J.

(i) FOOTNOTES:

1. As will appear, the weakest area of the Secretary's brief, probably because of the severe time pressure, is in its thin treatment of the facts, largely and uncritically rested upon the testimony of the Trustee. Even so, isolating only one (though a major one) of the factors weighing against defendants, the brief says (pp. 17-18) that "Rarback's appointment under the circumstances permits an inference of bad faith on the part of the International." (Emphasis added.) Weighing an array of further facts overlooked (or, at least, not mentioned) in the Labor Department's brief, the court concludes that the adverse inference is compelling rather than merely permissible.

2. The Council has an unsalaried President, Louis Caputo, who is formally assigned as an "administrative aide" to the Secretary-Treasurer, the chief official.

3. The inference is drawn with reasonable confidence from the testimony about the typewritten mailings together with the whole pattern of Rarback's dealings with the Council as his personal domain.

4. The significance for the present case of some of this extensive litigation is considered further below.

5. Pertinent Code resolutions of the AFL-CIO state that "any person is entitled, in the exercise of his individual conscience, to the protection afforded by the Fifth Amendment," and affirm "that this historical right must not be abridged." At the same time, the Federation has declared, when a trade union official "decides to invoke the Fifth Amendment for his personal protection and to avoid scrutiny *** into alleged corruption on his part, he has no right to continue to hold office in his union." Defendants here have tended to treat the privilege as a complete explanation for failure to explore the allegations of "sweetheart" dealings by Rarback, ignoring both (a) that the union is not a government and (b) that even government is not thus paralyzed in calling upon officials to account for their official performance. See Spevack v. Klein, 385 U.S. 511, 516, n. 3 (1967) (ii) (opinion of Douglas, J., joined by the Chief Justice and Justices Black and Brennan); id. at 519-20 (Fortas, J., concurring). The net of the opinions in Spevack v. Klein (plurality, concurrence, and dissents) is that a public officer is not shielded by the privilege from inquiries about performance of his official duties.

6. The report was supplied by counsel for the Secretary and marked in evidence as Court Exhibit 3.

7. Under item "8," where space is given to add information "which explains each reason checked above" (emphasis added), the form signed by Raftery states: "In addition to reasons cited in the telegram, there is a pending law suit in Federal Court (Westgate Corp. v. District Council No. 9) which seeks nullification of collective bargaining agreements, alleging conspiracy, among other things."

8. As mentioned earlier, a considerable portion of the Trustee's affidavit is devoted to his administration of the workaday business of the Council. He expands at length on an organizing drive, on a picketing program, stewards' meetings, educational activities, and improved investment practices. These administrative efforts add substantially to the bulk of the affidavit, but shed little light on the issues genuinely in dispute. The Trustee also enlarges on his repair of the inadequate bylaws, his improvement of auditing procedures, and his efforts to enforce the requirement of employer bonds. These items do in fact suggest improvements in the existing situation, but they are relatively peripheral as against the major problems of laxity, alleged corruption, and undemocratic administration which supposedly gave rise to the trusteeship.

9. The lowered salary, highlighted in the Trustee's parentheses, was proved in the hearing to be $250 weekly as against Rarback's former salary of $275.

10. Rarback himself, in 1960, upon the indictment of a District Council delegate, had obtained immediately the delegate's resignation in order (as Rarback put it at the time) to insure that the man "not embarrass the Union by holding an official post in it until such time as he was vindicated in the Courts." Trusteeship Hearing, D. Ex. M. pp. 427, 430.

(iii) 11. The court has resisted unsuccessfully recalling the illustration of absolute neutrality in the old story of the lady who, finding herself a spectator while her unarmed spouse fought a grizzly bear, shouted: "Go it husband! Go it bear!"

12. Compare the Labor Department's study, Union Trusteeships - A Report to Congress (September 1962), placed in evidence by defendants:

> "* * * (I)f a trusteeship is validly imposed for one of the statutory purposes, such as the correction of corruption or financial malpractice on the part of certain officers of a subordinate, compliance with the purposes of section 302 may best be secured by removing the officers in question and temporarily appointing others, despite the provisions of title IV." P. 39; see also p. 104.

13. See Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, Titles I-VI. p. 650 (Department of Labor 1964).

14. Id. at p. 657.

15. Comments of AFL-CIO President Meany, Hearings before a Joint Subcommittee of the Committee on Education and Labor, 86th Cong., 1st Sess., p. 1492 (1959).

16. S. Rep. No. 187, 86th Cong., 1st Sess. (1959), in Legislative History, supra note 13, p. 658.

17. Congressman Santangelo, commenting on the substantially identical predecessor to Section 304(c) in the Kennedy-Ives bill, S. 3974, 85th Cong., 2d Sess., Sec. 204(c) (1958). Legislative History, supra note 13, p. 649

18. On June 14, 1967, the court met with counsel, including representatives of the Labor Department, announced informally the rulings to be embodied herein, and invited assistance on the problems of scheduling, supervision, and related aspects of the order to be entered. While carefully reserving their several objections to the court's rulings, counsel were most helpful in arguing out the implementing details. The court is especially indebted in this respect, as in others, to counsel for the
(iv) Labor Department, whose views and assistance are reflected in the provisions outlined herein for inclusion in the order.

19. At defendants' request, the question of a bond is postponed to the time for settlement of the order.

NEW YORK 1966
(DISTURBING THE PEACE)

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To be Argued by
MARVIN M. KARPATKIN

Cal. No. 453
SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : FIRST JUDICIAL DEPT.
----------X

THE PEOPLE OF THE STATE OF NEW YORK

-against-

LAWRENCE SELTZER, SALVATORE CUCCHIARI,
STEPHEN CAGAN, ROBERT KAFFKE and
JARED ISRAEL,

Defendants-Appellants.

----------X

REPLY BRIEF OF DEFENDANT-APPELLANT, JARED ISRAEL

INTRODUCTORY STATEMENT

This brief is submitted in reply to certain of the arguments and contentions set out in the brief submitted by the District Attorney of New York County in behalf of the respondent, insofar as concerns the defendant-appellant Jared Israel. This defendant-appellant's original brief, dated August 25, 1965, contains a typographical error in the first paragraph on page 1. It is erroneously stated there that the defendant was convicted under Section 722, subdivisions [2] and [4], while, of course, the convictions were under Section 722, subdivisions [2] and [3].

POINT I

THE DISTRICT ATTORNEY'S ATTEMPT TO REHABILITATE THE PROSECUTION'S CASE BY LABORED EFFORTS TO EXPLAIN, RECONCILE OR JUSTIFY THE NUMEROUS INSTANCES OF SELF-CONTRADICTION, INHERENT IMPROBABILITY, INCREDIBLE CONFUSION, COLOSSAL IGNORANCE AND/OR OUTRIGHT PERJURY ON THE PART OF THE SOLE PROSECUTION WITNESS, IS TOTALLY UNPERSUASIVE.

1. On pages 17 to 19 of the District Attorney's brief, an attempt is made to minimize Judge Shalleck's grave doubts about Detective Cirile's testimony. It is suggested that since defense counsel used the expression "There is no question about" in one portion of his summation, and since Judge Shalleck used the same expression in commenting on the contention that Cirile's testimony was either embellished or perjurious, this *ipso facto* proves that the Judge's use of this expression unequivocally meant he believed the negative of it, while defense counsel's use of it was in arguing the affirmative. This is indeed a resourceful attempt by the District Attorney, but it will not withstand analysis. Obviously, when any expression made in the course of oral argument or colloquy is ambiguous, one must look to the record to see the context in which it was uttered in order to determine its true meaning. Defense counsel was plainly

arguing the sufficiency in numbers of police officers. But in what context did Judge Shalleck use this expression? As we point out on pages 28, et seq., of our original brief, he referred to "extremes in the testimony" (R. 477), and he placed one of the defendants at one extreme, and Cirile at the other extreme. It is further apparent that it was Judge Shalleck's dubiousness about Cirile's testimony which led to the acquittal of subdivision [4], but was not confined thereto (R. 447, et seq).

2. The District Attorney's brief (p. 18) concedes the presence of many inconsistencies in Cirile's testimony, but attempts to paper this over by arguing that the officer could not be expected to recall "details". There is not even a semblance of an effort at rebutting the eight major illustrations of contradiction, confusion, or worse, set forth in our original brief on pages 30 to 34.

In response to the most damaging self-contradiction, i.e., Cirile's original testimony that he had all of the defendants under observation for over two hours and his belated revision, after prompting, to seven or eight minutes, the District Attorney's response to this is an attack on defense counsel for seeking to bring this

inconsistency to the Court's attention. At R. 49, defense counsel objected to the following question:

> "Q. When you say you had them under observation for, approximately, two hours, do you mean the group in general or do you mean the five individual defendants?"

The stated basis of the objection was that this was a leading question. Indeed, it would be hard to find a question more obviously leading. The District Attorney virtually put the words of the desired answer into the testifying officer's mouth. He could not have gotten a better effect if he took the stand and testified himself. It is therefore surprising indeed that the office of the District Attorney comes to this appellate court and attacks defense counsel for performing his professional duty to his client.

3. An effort is made to attack the credibility of the defendant Israel by pointing to an alleged inconsistency in the testimony of the defendant Seltzer (D.A.'s Brief, pp. 19-20). It should first be noted that notwithstanding the ingenious attempts to involve the defendant Israel's credibility, and thereby lessen the impact of his three character witnesses, there is no inconsistency anywhere in Israel's testimony.

But what about the District Attorney's startling discovery of the "glaring contradiction" in Seltzer's testimony: the testimony at R. 185 that he did not see Cirile until being booked at the precinct and the colloquy in the record between the Court and Seltzer at R. 183, which would seem to indicate that Cirile was involved with Seltzer prior thereto. Defense counsel respectfully suggests that this is an error in the transcription of the record, and that the word "not" which was part of Seltzer's answer was erroneously omitted. The answer should have read "Right, the no uniformed man or non-uniformed -- were <u>not</u> officer Cirile". The District Attorney's ~~brief~~ charges that when Seltzer, at R. 185, denied seeing Cirile until being booked he had forgotten his testimony two pages earlier, is ridiculous. In fact, Seltzer explicitly denied that it was Cirile, at R. 182, in response to a question by Judge Shalleck:

"BY THE COURT:

"Q. An officer other than the one who testified here earlier today?

"A. Yes."

Then, at R. 183, in response to further questions by his counsel and by the Court, Seltzer repeated his testimony that neither of the two arresting officers was Cirile. Any

confusion here is plainly the result of an error in transcription, and it is unseemly for the District Attorney to pounce on this, deliberately overlooking the context.

4. One of the most incredible things about Cirile's testimony was his inaccuracy or worse in recalling that among the slogans and epithets shouted were "Ban the Bomb in Vietnam" and "Communist Police". The inherent improbability that such slogans could have been used is reflected in Judge Shalleck's request that this answer be repeated (R. 36). The point would not be belabored except that with even greater incredibility than the original testimony, the District Attorney's brief accepts the veracity of this testimony (p. 13, p. 22). It is a matter of record that the use of the "Ban the Bomb" slogan terminated upon the ratification of the International Test Ban Treaty in 1963. Persons protesting the war in Vietnam have never used the slogan "Ban the Bomb in Vietnam".

And who could have conceivably used the epithet "Communist Police"? Certainly not any persons who were hostile to the demonstrators, since their slogans, if any, would presumably be encouraging the police. Hostile persons might call the demonstrators communists, but not the

police. And to suggest that these demonstrators, protesting American foreign policy in Vietnam, would have called the police communists, reveals colossal ignorance and a complete failure of sensory perception. Any high school student knows that this could not have happened. It is surprising enough to find a police officer with such little comprehension, but it is incredible to find this palpable nonsense uncritically accepted and reiterated as established fact in a brief presented to an appellate court by the District Attorney of New York County.

POINT II

THE DISTRICT ATTORNEY'S BRIEF FAILS TO UNDERSTAND THE NATURE OF THE OFFENSE OF DISORDERLY CONDUCT.

1. Nowhere in the District Attorney's brief is there any appreciation of the dual nature of disorderly conduct. To find a defendant guilty it is not enough that he has committed one of the forbidden acts in the various subdivisions; there must likewise be proof of either intent to breach the peace or likelihood of breach of the peace. People v. Donegan, 191 N.Y.S.2d 701, 703 (Sp. Sess. App. Pt., 1959). Yet nowhere in the District Attorney's brief is there any discussion of the breach of the peace

element. The defense established the presence of police in sufficient numbers to negative the likelihood of any breach of the peace. Edwards v. South Carolina, 372 U.S. 229, 233 (1964); People v. Collins, 254 N.Y.S.2d 182, 184 (App.T.,2d Dept. 1964) affirmed on opinion below 16 N.Y.2d 554 (1965). There was no contrary testimony, as the District Attorney's brief grudgingly concedes on page 24.

This confusion is compounded by the District Attorney's attempt to carve out an exception to the Edwards doctrine, accepted in New York in the Collins case, that the presence of police is not to be taken into consideration where the demonstration is "disorderly" (D.A.'s Brief,p.24). But whether or not the demonstration is disorderly is a question of law depending on two factors, both the commission of the prescribed acts, and the likelihood of breach of the peace. The Supreme Court has said, and the Court of Appeals apparently agrees, that one of the factors in determining whether breach of the peace is likely is the presence or absence of police. Therefore, it is bootstrapping at its worst, and predetermination of guilt, to argue that this factor is not relevant.

2. The District Attorney attempts to distinguish the demonstrations which led to the Supreme Court decisions in Edwards v. South Carolina, supra, and Cox v. Louisiana, 379 U.S. 536 (1965) from the demonstration in this case by arguing that the Cox and Edwards demonstrations were "completely orderly". Of course, that is not what the ~~responsive~~ respective Attorneys General of Louisiana and South Carolina argued before the Supreme Court of the United States.

3. There is nothing in the District Attorney's brief which shows any violation by the defendant Israel of subdivision [2]. Even assuming all of Detective Cirile's testimony to be true, no evidence was presented at the trial and there is no evidence which shows that Israel annoyed, disturbed, interfered with, obstructed, or was offensive to anyone other than Cirile himself. Although Cirile did testify that he made certain statements to Israel concerning obstruction of pedestrians, he did not in fact testify that there was any such obstruction by Israel. In response to a question by the Court he admitted that other than a certain exchange involving the defendant Seltzer and an unknown pedestrian, he was not aware of any conversation between pedestrians and any of the other defendants (R. 148). Nor did he receive any complaints from any pedestrians

concerning any activity by Israel (R. 126). There can be no conviction under subdivision [2] if the only person subjected to the defendant's allegedly annoying and obstructive activities was the police officer. See People v. Lasister, 170 N.Y.S.2d 702 (Sp.Sess. App. Pt., 1st Dept. 1958).

4. Assuming the credibility of Cirile's testimony, the only basis for conviction under subdivision [3] is the questionable authority of People v. Galpern, 259 N.Y. 279 (1932). Galpern is indeed a puzzling case. While it holds at the beginning that "Police officers are not the final arbiters of the rights of citizens" (Id. at 281), it does uphold a conviction under subdivision [3] under apparently very peaceful and non-breach of the peace provoking circumstances merely because of the refusal to obey a police officer's order to move on.

That Galpern is of questionable authority today is conceded in the District Attorney's brief on page 15. However, the District Attorney is in error in stating that the Galpern case was "cited with approval" in People v. Carcel, 3 N.Y.2d 327 (1957). In fact, in Carcel, the Court of Appeals questioned Galpern, and then decided the

issue under subdivision [3] by finding that there could not be "congregating with others" unless there were at least three persons together. (Id. at 333). Furthermore, Galpern was seriously limited by the Court of Appeals in People v. Munoz, 9 N.Y.2d 51, 58 (1961) where Judge Van Voorhis described it as a case involving "intent to provoke a breach of the peace coupled with a refusal to move when ordered by the police". And a further inroad on the authority of the Galpern case was surely made when the Court of Appeals, in People v. Collins, 254 N.Y.S.2d 182,184 (App. T., 2d Dept. 1964) affirmed the Appellate Term's reversal of disorderly conduct convictions, People v. Collins, 216 N.Y.2d 554 (1965), notwithstanding the fact that the dissenting Justice in the Appellate Term relied exclusively on Galpern.

Even prior to Galpern there is respectable judicial authority to the effect that disorderly conduct is not committed by merely refusing to obey a police officer's order to move:

> "Mere disobedience of an officer is not always an offense punishable by law, any more than his command is not always the law."
> People v. Arko, 199 N.Y.S.2d 402 (Sp.Sess. App. T., 2d Dept. 1922)

Accord: People v. LoVecchio, 56 N.Y.S.2d 354 (1945);

People v. Barkal, 36 N.Y.S.2d 1011 (1942) ("This medium of protest, redress and propaganda cannot be subjected to the whim, caprice or arbitrary rule of any police officer").

5. The District Attorney's brief argues that People v. Carcel, supra, is not applicable in this case since in Carcel the conviction under subdivision [3] was reversed because there were only two defendants congregating with each other. But even assuming this limited construction of Carcel, the facts are peculiarly applicable. By Detective Cirile's own testimony, the only person with whom the defendant Israel was "congregating" at the time of the arrest was the defendant Cucchiari. The District Attorney's own statement of the People's case (Brief, pp. 2-4) claims that the arrests occurred in three separate groups: first Seltzer by himself; then Israel and Cucchiari; and finally Cagan and Kaffke. There was absolutely no testimony for the prosecution that these five defendants congregated together; indeed, the testimony was to the contrary. If Carcel means, as the District Attorney's brief argues, that there cannot be a conviction under subdivision [3] unless there are at least three persons congregating together, then the conviction of the defendant Israel under subdivision [3] must certainly be reversed, since, according

to the police officer and the District Attorney's statement of the People's case, he only congregated with one other person.

POINT III

THE DISTRICT ATTORNEY'S BRIEF MISREADS DEFENDANT-APPELLANT ISRAEL'S ARGUMENT OF IMPROPER JOINDER.

On page 26, the District Attorney's brief stated that although the original brief listed "many reasons" to show that a joint trial may result in prejudice, it failed to note that none of the reasons applied to this case. The learned District Attorney is mistaken. On page 48 of this defendant's original brief, there is set forth the principal reason against joinder, i.e., that evidence which is relevant to the guilt of one accused may be irrelevant to the guilt of a co-defendant. For this reason the Court should have granted the defendant Israel's motion to sever. Its failure to grant such motion was prejudicial error. He was in fact not judged exclusively on the basis of his own acts, but in a much broader frame of evidential reference, resulting in a species of guilt by association. See People v. Penn, (App. Term, 1st Dept. 1964) N.Y.L.J., October 16, 1964, p. 16, col. 7, dissenting opinion.

POINT IV

THE DISTRICT ATTORNEY'S BRIEF WOEFULLY MISUNDERSTANDS THE MEANING OF THE FIRST AMENDMENT AS APPLIED TO DEMONSTRATION CASES.

1. On page 20 of the District Attorney's brief, the contention is made that the First Amendment "does not sanction disturbance of the pease". Of course, the phrase "disturbance of the peace" does not describe any crime under the New York Penal Law. But there is a greater fallacy in the District Attorney's reasoning, which is illustrated by a portion of the Supreme Court's decision in Edwards v. South Carolina, supra, at p. 684. The Court wrote:

> "A function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech...is...protected against censorship or punishment unless shown likely to produce a clear and present danger of a serious substantial evil that rises far above public inconvenience, annoyance or unrest...There is no room for a more restrictive view."

Plainly, some measure of "disturbance" or

"inconvenience" or "dispute" is not only consistent with the First Amendment, but is invited by the First Amendment. The First Amendment's protection of assemblages is not limited to funeral processions. Because of the preferred position which First Amendment freedoms enjoy, Thomas v. Collins, 323 U.S. 516 (1945), to curb freedom of speech there must be considerably more likelihood of violence than that which existed in this case.

2. The District Attorney's attempt to dismiss the shouting of slogans concerning foreign policy and abusive police practices as not being "communication" and thereby not entitled to protection, is so absurd that no argument is necessary. See Edwards v. South Carolina, supra.

3. The essential fallacy in the District Attorney's formulation is clearly evidenced by the statement on page 22 that the First Amendment affords only "limited protection" to demonstrations. Of course, everything has limits. See Cox v. Louisiana, 379 U.S. 536 (1965). But much more to the point is the articulation by the Supreme Court in Thomas v. Collins, supra, of the reason why the First Amendment has a preferred place which gives its liberties "a sanctity and a sanction not permitting dubious intrusions":

"It is the character of the right not the limitation which determines which standard governs the choice."

It is respectfully submitted that the District Attorney's brief is so preoccupied with the limitation that it does not accurately perceive the character of the First Amendment right which is involved in this case.

CONCLUSION

The judgment of conviction of the defendant-appellant Jared Israel should be reversed.

Respectfully submitted,

KARPATKIN, OHRENSTEIN & KARPATKIN
Attorneys for Defendant JARED ISRAEL

Of Counsel:

MARVIN M. KARPATKIN

10/29/65

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N. Y.
TEMPLETON 2-9600
CABLE "KARPOLAW NEWYORK"

March 17, 1966

MAR 18 1966

Carl Rachlin, Esq.
Congress of Racial Equality
38 Park Row
New York, N.Y. 10038

Dear Carl:

I enclose a copy of the reply brief which we filed in the Appellate Term, First Department in People v. Seltzer, et al. The material concerning Galpern and Penal Law, Section 722(3) appears on pages 10 through 12.

I hope it will be helpful, and if you like and if I am not being too presumptuous, I would be very glad to read your manuscript and give you such comments as I may have.

Regards,

Marvin

Marvin M. Karpatkin

MMK:eb
Enc.

P.S. Could you please return the copy when you have finished with it.

MMK

Suffolk County (N.Y.) Race Incidents, Correspondence, Case, Police Accounts
1968

Please Retain Original Order

ECONOMIC OPPORTUNITY COUNCIL
OF SUFFOLK, INC.
83 EAST MAIN STREET, PATCHOGUE, N. Y. 11772
AREA CODE 516
289-5800

August 16, 1968

Mr. Ralph Watkins
Suffolk County Human
Relations Comm.
Veterans Highway
Hauppauge, N.Y.

Dear Mr. Watkins:

Please find enclosed resolution passed by the Economic Opportunity Council of Suffolk at the meeting of August 15, 1968, in regard to the incident that occurred on the evening of August 14, 1968, at the Bay Area Neighborhood Opportuntiy Center which involved residents of the Bay Area community and members of the Suffolk County Police Department.

Respectfully yours,

Alphonso Anderson
Executive Director

AA:jk

enc:

[1968]

ECONOMIC OPPORTUNITY COUNCIL
OF SUFFOLK, INC.
83 EAST MAIN STREET, PATCHOGUE, N. Y. 11772
AREA CODE 516
289-5800

RESOLUTION

WHEREAS the Economic Opportunity Council of Suffolk, Inc. has duly passed a resolution on August 1, 1968 opposed to the use of the chemical MACE by Suffolk County's Police Department and

WHEREAS the Economic Opportunity Council of Suffolk, Inc. has received a report from the chairman of the Bay Area Community Action Committee regarding an alledged disturbance at the Bay Area Community Action Center on the evening of August 14, 1968 and

WHEREAS the said chairman was an eye witness to the majority of the happenings and has spoken to witnesses and

WHEREAS it appears that the action of the Suffolk County Police Department in using force, brandishing guns, and using the chemical MACE was unnecessary and uncalled for and

WHEREAS the arrest of the Director, Mr. Wilfred John, who was acting in the course of his duties was not only without foundation , but increased the tension at the scene of this incident, let it therefore be

RESOLVED that this Council on the basis of facts presented by the Bay Area Community Action Committee Chairman, supports and extends to Mr. Wilfred John full confidence in the actions he took with reference to the alledged disturbance, and deplores his arrest as unjust and unnecessary under the circumstances and be it further

RESOLVED that this Council deplores the actions of the Suffolk County Police Department, particularly the use of MACE on children of tender years and hereby demands that the use of MACE by the Suffolk County Police Department be prohibited, and the unnecessary use of force and the brandishing of guns is deplored

and the Commissioner of Police appologize to the citizens of the Bay Area for the treatment offered them by the members of the Suffolk County Police Department and it be further

RESOLVED that the Economic Opportunity Council of Suffolk, Inc. request that the County Executive of Suffolk convene a special hearing to investigate what occured on the night of August 14, 1968 at the Bay Area Neighborhood Opportunity Center from the people involved.

THE BAY AREA COMMUNITY ACTION COMMITTEE

"A FEDERALLY-FUNDED PROGRAM INVOLVING LOCAL VOLUNTEER SUPPORT IN THE 'WAR ON POVERTY'"

404 MAIN STREET
CENTER MORICHES, NEW YORK, 11934

DIRECTOR
WILFRED JOHN

CHAIRMAN
CHARLES H. WAIDE

August 17, 1968

The Hon. H. Lee Dennison
County Center
Riverhead, New York

Dear Mr. Dennison:

The Board of Directors of the Bay Area Community Action Committee has held an emergency meeting to discuss the incident which took place at our Neighborhood Opportunity Center in Center Moriches last Wednesday Evening, August 14th.

We are deeply disturbed by the arrest and brutal treatment of Mr. Wilfred John, the Center Director, who was acting in his capacity as Center Director and Police Aide when he was taken into custody. This action merely served to aggravate a potentially tense situation. Moreover, the indiscriminate use of chemical Mace, particularly on young children, by the police, and the open brandishing of guns contributed to increase of tensions.

It is our contention that an immediate investigation be conducted into the behavior of the police during the incident. Such an investigation should include an open hearing, as has been proposed by the Suffolk Economic Opportunity Council. The Bay Area Community Action Committee demands such a hearing, at which time the community will be permitted to present its interpretation of the incident.

It is our request that you take immediate steps to initiate an open hearing, for the behavior of the Suffolk Police last Wednesday sets a dangerous precedent for police-community relations in Suffolk County.

Respectfully yours,

Charles H. Waide

Charles H. Waide
Chairman
Board of Directors
Bay Area Community Action Committee

copies: Comm. John Barry
Dr. Ruth Pasternack
Mr. Ralph Watkins

THE BAY AREA COMMUNITY ACTION COMMITTEE

"A FEDERALLY-FUNDED PROGRAM INVOLVING LOCAL VOLUNTEER SUPPORT IN THE 'WAR ON POVERTY'"

404 MAIN STREET
CENTER MORICHES, NEW YORK, 11934

DIRECTOR
WILFRED JOHN

CHAIRMAN
CHARLES H. WAIDE

August 17, 1968

Mr. Ralph Watkins
Suffolk County Human Relations Commission
Veterans Memorial Highway
Hauppauge, N.Y. 11788

Dear Mr. Watkins:

The enclosed letter was sent to H. Lee Dennison as directed by the Board of Directors of the Bay Area Community Action Committee, Inc.

The enclosed flyer has been distributed in many local churches and is being distributed in the Community.

Sincerely yours,

Charles H. Waide

Charles H. Waide
Chairman

enc. (2)

[1968]

A STATEMENT FROM THE BAY AREA COMMUNITY ACTION COMMITTEE TO THE RESIDENTS OF THE BAY AREA

The Bay Area Community Action Committee is concerned that an occurence such as the one that took place on Wednesday, August 14th, could have developed as it did. We are certain that a more sensitive handling of the initial minor disturbance would have prevented the aggravation of the situation that did occur. The initial disturbance was one that could have occurred with any group of people.

An open house program, sponsored by the N.O.C. and featuring a talent show and several speakers, attracted a large attendance including a large number of families. The program was similar to a very successful one conducted by the Center earlier this year. During the program, the minor disturbance outside the Center took place.

The Director of the Center, Mr. Wilfred John, in trying to prevent apparent violence in the initial application of law enforcement measures, was himself arrested. His actions were consistent with his duties as the Center Director and a Community Police Aide and are supported by the B.A.C.A.C. and the Economic Opportunity Council of Suffolk Inc. Mr. John has, in the past, responded with similar threats of disturbance in other parts of the Community, and effectively mediated those problems.

Unfortunately, poor judgement on the part of the Police in completing his arrest prevented the Director from accomplishing his duties and resulted in a resumption of confusion. The use of excessive force, described by observers as police brutality, and the brandishing of firearms further antagonized the community people. The use of the chemical Mace for crowd control without warning, and the failure to indicate to its victims the need for immediate removal of the chemical from their bodies to prevent possible serious physical complications, were contrary to Commissioner Barry's assurances made when he issued the weapon to the police. Its use created hysteria among many in the group.

Throughout the difficulty, adults, youth workers, and many of the young people held the more excited members in check. The fact that this internal control was in operation is a clear indication that the group was not out to create trouble. The fact that no property damage occurred is further proof of this. The Community Action Program itself is largely responsible for the fact that the problem did not escalate beyond the point that was reached.

This occurrence comes at a time when the Bay Area Board is being strengthened by representatives from public and private community groups. The Program provided at the Center has been improved and extended to serve more people. Community support is needed now more than ever, and it would be tragic if the problem of last Wednesday caused a reduction in the growth of this support.

An indication that this is happening to some degree is shown by the fact that the owner of the Center building felt it necessary to ask us to vacate the premises. It is known that he has been subject to public insult and pressure for making the building available to the Program. Such coercion seems hardly fair, infringes on his rights as a business man, and in fact interferes with the Federal effort to help the poor to develop their capabilities and free them from poverty. The Program can be of tremendous value to the Community but needs the support and acceptance of the Community. WE NEED YOUR SUPPORT.

For the Board of Directors,

Charles H. Waide, Chariman

Martin Luther King, Jr.
SCHOLARSHIP FUND
OF SUFFOLK COUNTY

AN 6-6924

7 CROSSBOW COURT
COMMACK, N.Y. 11725

PRESIDENT
MRS. ALVIN JOHNSTON

VICE PRESIDENT
MR. MILTON BERNSTEIN

TREASURER
MR. JOHN MANAGAULT

SECRETARY
MRS. STANLEY GETHIN

August 22, 1968

SEDFRE
164 Madison Ave.
New York, N. Y.

To Whom It May Concern

On behalf of the Martin Luther King, Jr. Scholararship Fund, we wish to register our disaproval of the use of MACE!

It is well known to the public what effects this drug has on the recpient but, it is still not known to man what long range effect this drug has.

It grieves us to think of the use of MACE on any human being but, most of all on the youth of our community. It is indeed a sad time in our lives when the Police cannot settle differences without adding to the pain that these same differences cause.

Because of our concern in this matter we would like you to make it known to the proper authorities.

Very truly yours,
Mrs. Alvin Johnston

PATCHOGUE - BROOKHAVEN

N. A. A. C. P. Youth Council

YOUTH ADVISOR
Mrs. Esther Dinkins
96 West Avenue
Patchogue, N. Y. 11772
Phone: 475-0473

PRESIDENT
Miss Madeline Dinkins
15 Brook Street
Patchogue, N. Y. 11772

August 23, 1968

Scholarship,
Education and
Defense Fund for
Racial Equality
164 Madison Avenue
New York, N.Y. 10016

Dear Sirs:

We are a youth group whose membership is made up of almost 100% young black men and women. We feel that because we are young and because most of us are black we cannot allow the actions of the Suffolk County Police to go unchalleged.

The Suffolk County Police has shown in the past, present (and most assuredly the future) to most interested persons, groups etc. and to all minorities that they either cannot or will not handle most "situations" without unnecessary force, and/or unlimited stupidity. The most recent "situation" that high-lighted their usual use of force and their lack of common-sense was of course in Center Moriches, in which they had a chance to use their "new toy"----MACE.

Our request is very simple: that there be a private investigation of the Suffolk County Police, and that your agency act as the investigators.

Sincerely yours,

Madeline Dinkins

(Miss.) Madeline Dinkins, President
Officers, members of Council & Exective Bd.

js/MD

SUFFOLK COUNTY
HUMAN RELATIONS COMMISSION
VETERANS HIGHWAY
HAUPPAUGE, N. Y. 11787

PHONE: 724-2900

RALPH R. WATKINS
CHAIRMAN

REV. ARTHUR C. BRYANT
VICE-CHAIRMAN AND
MIGRANT CHAIRMAN

COMPLAINT CHAIRMAN
KENNETH ANDERSON

EDUCATION CHAIRMAN
MRS. MAE WALKER

EMPLOYMENT CHAIRMAN
BURGHARDT TURNER

HOUSING
ALPHONSO ANDERSON
CHAIRMAN

JOEL BECKER
VICE CHAIRMAN

TEACHER RECRUITMENT
REV. FR. T. PETER RYAN
CHAIRMAN

JUAN ANTONIO AYALA
DR. HUGH CLELAND
JOHN KENNEDY
ATTY. EDWYN SILBERLING
TYRELL WILSON

GEORGE PETTENGILL
EXECUTIVE DIRECTOR

PHILLIP JORDAN
JOB PROJECT DIRECTOR

MRS. VERA DUBITSKY
ASSISTANT DIRECTOR

ALBERT E. CLARKE
TRAINING DIRECTOR

August 26, 1968

Mr. Henry G. Smith, Jr.
Scholarship, Education and Defense Fund for
Racial Equality, Inc.
150 Nassau Street
New York, New York 10038

Dear Hank:

The Suffolk County Police Department has used chemical mace in Center Moriches last week on peaceful members of the community including seven, eight and nine year old children. I would like to see to it that legal assistance be offered to their parents and hope that SEDFRE can offer help.

It would seem to me that there is some action that parents could take in defense of their children when the Suffolk County Police Department uses dangerous drugs too harmful to be used by the armed forces of the United States.

I am sorry I didn't see you when you were in Suffolk but maybe my luck will change.

Sincerely,

Ralph R. Watkins

Ralph R. Watkins
Chairman

RRW:plm

[1968, August]

Martin Luther King, Jr.

SCHOLARSHIP FUND

OF SUFFOLK COUNTY

AN 6-6924

7 CROSSBOW COURT

COMMACK, N.Y. 11725

PRESIDENT
MRS. ALVIN JOHNSTON

VICE PRESIDENT
MR. MILTON BERNSTEIN

TREASURER
MR. JOHN MANAGAULT

SECRETARY
MRS. STANLEY GETHIN

Dear Sirs:

As President of the Martin Luther King Scholarship Fund, I urge an immediate investigation as to why MACE was deemed neccessary in the ghetto area. I feel the indiscrimanate use of any drug must not be in the hands of the Police before it has been tested and should be used cautiously.

It greives me to see so many things to be done in our Cmmunity to build a better relationship b between the black people and the Police.. and now MACE.

Very truly yours,

Mildred Johnston

[1968, August]

Concerned Democrats Cl
c/o Southampton Colleg
Southampton, New York

SEADFFRE
164 Madison A venue
New York, New York 10016

Dear Sirs,

Concerned Democrats of Congressional District # 1, a reform organization vitally concerned with the problems of poverty, discrimination, equal rights, war and peace, are incensed and astounded by the recent indiscriminate use of Mace by the Suffolk County Police Department.

We urge an investigation into:why Mace in Ghetto areas..., why Mace used on children..., and finally, why Mace in the first place....

We must be about solving our crucial problems, not creating more problems. We urge your immediate attention to this matter.

Very sincerely,

Christin M. Veech

Christin M. Veech
Secretary
Dr William T. Burke
Coordinator

TELEGRAM

September 5, 1968

U. S. Attorney General Ramsey R. Clark
U. S. Department of Justice
Washington, D. C.

To date have received no reply to telegram of August 20, 1968 which requested investigation of use of Chemical Mace by Suffolk County Police Department in Center Moriches August 14, 1968. What is being done.

RALPH R. WATKINS
CHAIRMAN

ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington

Zales

DEC 10 1968

Mr. Carl Rachlin
Director of the Scholarship,
Education and Defense Fund for
Racial Equality
164 Madison Avenue
New York, New York 10016

Dear Mr. Rachlin:

This is in reply to your correspondence concerning the incident at Center Moriches Community Action Center on August 14, 1968.

We are carefully considering your complaint in order to determine if any violation of federal law exists. Should it develop that a violation of federal law is involved, appropriate action will be taken.

Sincerely,

Stephen J. Pollak

STEPHEN J. POLLAK
Assistant Attorney General
Civil Rights Division

DISTRICT COURT OF THE COUNTY OF SUFFOLK, NEW YORK

DISTRICT - DOCKET NO.

CC# 68-150141
ARREST #
COMMAND # 415
SQUAD # 1
Information

DEF. IN CUSTODY
.....hrs. ..... days
DATE: From 8-14 to .....

☒ MISDEMEANOR
☐ VIOLATION

STATE OF NEW YORK
ss.:
COUNTY OF SUFFOLK

Defendant's Name Wilford John
No. and Street 6 Carver Blvd.
Post Office Bellport, New York
Date of Birth 3/23/36

Ptl. Gregory Gates #1303, a police officer of the Police Department, County of Suffolk, N.Y., being duly sworn says that on or about August 14, 1968 at about 10:00 P.M. at Hamlet of Center Moriches Town of Brookhaven County of Suffolk, N.Y., the defendant Wilford John wrongfully, intentionally, recklessly, with criminal negligence, knowingly violated section 195.05 of the Penal Law of the State of New York, obstructing governmental administration.

in that: defendant did at the rear of the Opportunity Center, Main St., Center Moriches, intentionally obstructed, impaired or prevented the administration of law or other governmental function and prevented a public servant your deponent, from performing an official function by means of intimidation and interference as follows:

While at the above location, your deponent a Suffolk County Police Officer in full uniform attempted to question an unidentified male who had assaulted an unidentified female. Both persons ran towards the rear of the Opportunity Center with your deponent in pursuit. As your deponent caught the male subject and attempted to speak to him, the defendant physically placed his body between your deponent and the unidentified male and began to argue loudly and berate your deponent stating among other things in a loud voice: "Take your hand away from your piece. You don't talk to him without talking to me. I'll handle this fucking thing".

Your deponent advised the defendant to stand aside so that your deponent could take the necessary police action, but defendant refused.

Because of the physical interference, the unidentified male ran away and was unapprehended.

WHEREFORE, he prays that the said defendant, having been arrested by your deponent, now be dealt with by this Court according to law.

SIGNATURE OF ARRESTING OFFICER

Subscribed and Sworn to before me

Aug 14 1968

Wm Baerlein - Sgt 305 415

Ptl. #1303 415

RANK/SHIELD NO. AND COMMAND

DISTRICT COURT OF THE COUNTY OF SUFFOLK, NEW YORK

DISTRICT - DOCKET NO. _____

CC # 68-150141
ARREST # 5738-68
COMMAND # 415
SQUAD # 1
Information

DEF. IN CUSTODY

..... hrs. ..... days

DATE: From 8-14 to .....

☒ RESISTING ARREST

☐ HARASSMENT

☐ DISORDERLY CONDUCT

STATE OF NEW YORK

ss.:

COUNTY OF SUFFOLK

Defendant's Name Wilford John
No. and Street 6 Carver Blvd.
Post Office Bellport, New York
Date of Birth 3/23/36

Ptl. Vincent Vaughan #1167, a police officer of the Police Department, County of Suffolk, N.Y., being duly sworn says that on or about August 14, 1968 at about 10:00 P.M. at Hamlet of Center Moriches Town of Brookhaven County of Suffolk, N.Y., the defendant Wilford John wrongfully, intentionally, knowingly, recklessly, with criminal negligence committed the offense of:

☒ RESISTING ARREST (Sec. 205.30 Penal Law), in that said defendant intentionally prevented and attempted to prevent a peace officer from effecting an authorized arrest;

☐ HARASSMENT (Sec. 240.25 Penal Law), in that said defendant, with intent to harass, annoy and alarm another person, attempted to and did strike, shove, kick and otherwise subject him to physical contact;

☐ DISORDERLY CONDUCT (Sec. 240.20 Penal Law), in that said defendant acted with intent to cause public inconvenience, annoyance and alarm and recklessly created a risk of public inconvenience, annoyance and alarm

in that: Defendant did at the Opportunity Center, Main Street, Center Moriches, intentionally attempt to prevent your deponent, a peace officer from affecting an authorized arrest upon himself to wit: did push and shove your deponent and otherwise attempt to evade his arrest on a charge of disorderly conduct, section 240.20 of the Penal Law State of New York.

All contrary to the provision of the above statute in such case made and provided.

WHEREFORE, he prays that the said defendant, having been arrested by your deponent, now be dealt with by this Court according to law.

Vincent Vaughan
SIGNATURE OF ARRESTING OFFICER

Subscribed and Sworn to before me

Aug 14 1968

Pt 1167 415
RANK/SHIELD NO. AND COMMAND

Lt Baessler Det 305 415
SIGNATURE, RANK/SHIELD NO. AND COMMAND

POLICE DEPARTMENT, COUNTY OF SUFFOLK, N.Y.

NOTE #1 - If information is made 'ON INFORMATION AND BELIEF', indicate this in the body of the complaint and attach

DISTRICT COURT OF THE COUNTY OF SUFFOLK, NEW YORK

_____ DISTRICT - DOCKET NO. _____

CC# 68-150141
ARREST # A-5735-68
COMMAND # 415
SQUAD # 1
Information

DEF. IN CUSTODY
.....hrs. ..... days
DATE: From .....to .....

X ☐ MISDEMEANOR
☐ VIOLATION

STATE OF NEW YORK
ss.:
COUNTY OF SUFFOLK

Defendant's Name JOHN LEWIS CARROLL
No. and Street 15 Saunders Street
Post Office Center Moriches N.Y.
Date of Birth 2-23-48

Raymond Willis, a police officer of the Police Department, County of Suffolk, N.Y., being duly sworn says that on or about August 14, 1968 at about 2220 P.M. at Center Moriches Town of Brookhaven County of Suffolk, N.Y., the defendant John Lewis Carroll did wrongfully, intentionally, recklessly, with criminal negligence, knowingly violated

Section 270.00 Sub. 2 of the Penal Law of the State of New York.

in that: he did possess fireworks. To wit:did have in his possession a starter pistolcolor black Made in Italy Serial #142140. All contrary to the provisions of the above statute in such case made and provided.

Defendant did not possess any permit for same.

After being advised of his constitutional rights, Defendant stated:

"I have no permit. I found it laying on the sidewalk."

WHEREFORE, he prays that the said defendant, having been arrested by your deponent, now be dealt with by this Court according to law.

Raymond Willis
SIGNATURE OF ARRESTING OFFICER

Subscribed and Sworn to before me
Aug 14 1968
Wm Baeuzle - Jr 308 415

Patrolman #979 415
RANK/SHIELD NO. AND COMMAND

DISTRICT COURT OF THE COUNTY OF SUFFOLK, NEW YORK

DISTRICT - DOCKET NO. _____

CC # 68-150141
ARREST # 5735-68
COMMAND # 415
SQUAD # 1
Information

DEF. IN CUSTODY
.....hrs. ..... days
DATE: From 8-14 to .....

☒ DISORDERLY CONDUCT
☐ HARASSMENT

STATE OF NEW YORK
ss.:
COUNTY OF SUFFOLK

Defendant's Name John Lewis Carroll
No. and Street 15 Saunders Street
Post Office Center Moriches, N.Y.
Date of Birth 2/23/48

Raymond Willis, a police officer of the Police Department, County of Suffolk, N.Y., being duly sworn says that on or about August 14, 1968 at about 10:20 A.M. P.M. at the Hamlet of Center Moriches Town of Brookhaven County of Suffolk, N.Y., the defendant John Lewis Carroll did wrongfully, intentionally, knowingly, recklessly, with criminal negligence committed the offense of:

☒ DISORDERLY CONDUCT in violation of Section 240.20 Subdivision 1 of the Penal Law, in that with intent to cause public inconvenience, annoyance and alarm and recklessly creating a risk thereof, said defendant:

- ☒ 1. engaged in fighting and tumultuous and threatening behavior.
- ☐ 2. made unreasonable noise.
- ☐ 3. in a public place used abusive and obscene language and made an obscene gesture.
- ☐ 4. without lawful authority disturbed a lawful meeting or assemblage.
- ☐ 5. obstructed vehicular or pedestrian traffic.
- ☐ 6. congregated with others in a public place and refused to disperse when lawfully ordered to do so by police.
- ☐ 7. created a hazardous or physically offensive condition by an act serving no legitimate purpose.

☐ HARASSMENT in violation of Section 240.25, Subdivision ..... of the Penal Law, in that with intent to harass, annoy or alarm another, said defendant:

- ☐ 1. struck, kicked and subjected deponent to physical contact and attempted and threatened to do the same.
- ☐ 2. used abusive and obscene language and made an obscene gesture in a public place.
- ☐ 3. followed a person in or about a public place.
- ☐ 4. as a student engaged in hazing.
- ☐ 5. engaged in a course of conduct which served no legitimate purpose and which alarmed and seriously annoyed deponent.

in that: Defendant did at the front of the Opportunity Center, Main St. Center Moriches, engage in tumultuous and threatening behavior, in that he did pick up a large box of refuse and throw same in the direction of your deponent and other Police Officers present at the scene. The garbage missed your deponent and struck a police vehicle. This occuring during a disorderly disturbance involving approximately one hundred thirty, (130) persons.

WHEREFORE, he prays that the said defendant, having been arrested by your deponent, now be dealt with by this Court according to law.

Raymond Willis
SIGNATURE OF ARRESTING OFFICER

Subscribed and Sworn to before me
Aug 14 1968
Wm Bassler - Sgt 30 415
SIGNATURE, RANK/SHIELD NO. AND COMMAND
POLICE DEPARTMENT, COUNTY OF SUFFOLK, N.Y.

Pc Trainee #979 415
RANK/SHIELD NO. AND COMMAND

DISTRICT COURT OF THE COUNTY OF SUFFOLK, NEW YORK

CRIMINAL - DOCKET NO. _____

CC # 68-150141
ARREST # 5738-68
COMMAND # 415
SQUAD # 1
Information

DEF. IN CUSTODY
2220 hrs. ..... days
DATE: From 8-14 to .....

☒ DISORDERLY CONDUCT
☐ HARASSMENT

STATE OF NEW YORK
ss.:
COUNTY OF SUFFOLK

Defendant's Name Wilford John
No. and Street 6 Carver Blvd.
Post Office Bellport, New York
Date of Birth 3/23/36

Vincent Vaughan #1167, a police officer of the Police Department, County of Suffolk, N.Y., being duly sworn says that on or about August 14, 1968 at about 10:20 ~~A.M.~~ P.M. at Hamlet of Center Moriches Town of Brookhaven County of Suffolk, N.Y., the defendant Wilford John wrongfully, intentionally, knowingly, recklessly, with criminal negligence committed the offense of:

☒ DISORDERLY CONDUCT in violation of Section 240.20 Subdivision 2-3 of the Penal Law, in that with intent to cause public inconvenience, annoyance and alarm and recklessly creating a risk thereof, said defendant:

- ☐ 1. engaged in fighting and tumultuous and threatening behavior.
- ☒ 2. made unreasonable noise.
- ☒ 3. in a public place used abusive and obscene language and made an obscene gesture.
- ☐ 4. without lawful authority disturbed a lawful meeting or assemblage.
- ☐ 5. obstructed vehicular or pedestrian traffic.
- ☐ 6. congregated with others in a public place and refused to disperse when lawfully ordered to do so by police.
- ☐ 7. created a hazardous or physically offensive condition by an act serving no legitimate purpose.

☐ HARASSMENT in violation of Section 240.25, Subdivision ..... of the Penal Law, in that with intent to harass, annoy or alarm another, said defendant:

- ☐ 1. struck, kicked and subjected deponent to physical contact and attempted and threatened to do the same.
- ☐ 2. used abusive and obscene language and made an obscene gesture in a public place.
- ☐ 3. followed a person in or about a public place.
- ☐ 4. as a student engaged in hazing.
- ☐ 5. engaged in a course of conduct which served no legitimate purpose and which alarmed and seriously annoyed deponent.

in that: Defendant did, in a public place, at the Opportunity Center, Main Street, Center Moriches, shout in a loud voice to your deponent, "Fuck You, I'll take care of this, " and thereafter continuously shouted obscenities such as "Fuck you, Cop, " and "You white Mother fucker," thereby causing a crowd of approximately one hundred thirty, (130) persons to gather who began to throw bottles, garbage and other debris at your deponent and other Police Officers on the scene.

WHEREFORE, he prays that the said defendant, having been arrested by your deponent, now be dealt with by this Court according to law.

Vincent Vaughan
SIGNATURE OF ARRESTING OFFICER

Subscribed and Sworn to before me
Glenn Hill 19 68

Lt. Brian Det 30P 415
SIGNATURE, RANK/SHIELD NO. AND COMMAND
POLICE DEPARTMENT, COUNTY OF SUFFOLK, N.Y.

Pm 1167 415
RANK/SHIELD NO. AND COMMAND

NOTE #1 - If information is made 'ON INFORMATION AND BELIEF', indicate this in the body of the complaint and attach

MRS. GERALD S. LEVINE
21 HEWITT BLVD.
CENTER MORICHES, N. Y., 11934

August 10, 1968

Hon. H. Lee Dennison
County Executive
Suffolk County Center
Riverhead, N.Y.

Dear Mr. Dennison:

I was enjoying the music at Wednesday's Social Night at the DACAC Center when the "incident" with the Suffolk County Police occurred. I was speaking to Rev. Giles and Mr. Waide, the DACAC Chairman when someone said there was a fight outside. By the time we walked out to the sidewalk, there were six police cars with lights blinking stretched out along the whole block. Quite a spectacle, enough to attract lots of interest. Most of the kids who had been peacefully listening to the bands upstairs had come down and were just standing on the sidewalk to see what was going on. Nothing threatening was being done by the kids. Nothing seemed to be happening, so I walked down the block to my car and left.

Before I could turn off at Senix Ave. to get to my home, two more police cars came screaming by, sirens wailing, lights flashing, and ran me off to the edge of the road to avoid being hit. I didn't see any of the alleged hassle between Mr. John, the kids, and the police, but I was certainly struck by what seemed to me to be great over-reaction by the police. They must be awfully jumpy to have 13 police cars respond so dramatically and to use force, especially when there were so many little children present. I had the distinct impression that such massive police presence precipitated whatever happened. Why couldn't they all have left except for one car to observe the situation in case it did deteriorate? They could have called for help if it was really needed, and so probably have avoided this uncalled for situation.

Sincerely,

Jaynee S. Levine

cc: Comm. Barry

South Street
Manorville, New York
August 16, 1968

On the evening of August 14th, at approximately 10:00 P.M., I was heading towards Patchogue when I noticed several police cars speeding towards Center Moriches. I decided to follow and see what the problem was.

When I reached the corner of Main Street and Chichester Avenue in Center Moriches, I noticed crowds of people on both sides of Main Street near the Neighborhood Opportunity Center, in addition to six or more police cars blocking the street. I quickly walked down the north side of Main Street, opposite the Opportunity Center.

There, I observed several policemen with small cans in their right hands. Some of the police moved in front of the Opportunity Center, moved into a crowd, and caused considerable agitation. I heard numerous screams and outcries from the crowd. I realized that the police were employing chemical Mace which was the substance in the spray cans they were holding.

I was particularly disturbed by one policeman who drew a gun, waved it about, and dashed down an alley adjacent to the opportunity center. The reaction of the crowd on the North side of the street was heightened by the sight of the drawn gun. It is my contention that actions such as this only served to aggravate matters.

As a member of the governing board of the CAP program, I am deeply disturbed by the complete lack of judgement shown by the police in handling the situation outside the opportunity center. I strongly feel that their behavior inflamed matters, rather than calmed things down.

The arrest of the Center's director was, fram all evidence I can gather, not only completely unjustifiable, but, moreover, an incredibly stupid action on the part of the police. However, it is certainly in keeping with the other indefensible actions taken by the Suffolk police on the evening of August 14th in Center Moriches.

(Signed)
Charles G. Backfish
Charles G. Backfish

August 16, 1968

I saw the following take place on the night of August 14, 1968 at the Community Center:

I was standing on the side door downstairs trying to keep the people inside and I saw Mr. John and his wife standing three feet or less in front of me with their backs to me. Policemen were standing in front of Mr. and Mrs. John and wouldn't let Mr. John get pass them. Mrs. Susan Rai, Legal Aide Lawyer went out and stood on the left side of Mr. John, Mrs. Rai then said to the officer in front of Mr. John, I am a lawyer why are you arresting him, the policeman replied sneeringly, go inside you don't practice law in the street, you can get him.

tomorrow. When the police then proceeded to push Mr. John the crowd surged outside of the building. I then took my younger brother across the street and I stood in front of Mr + Ms Dunce watching the scene. The police I saw ~~[illegible]~~ had sticks out and trying to force the people inside the younger children, teenagers, and adults then began running and the policemen were chasing them. Two officers I saw had their guns pulled pointed to the second story of the building. I went back across the street and stood on the edge of the crowd where I saw a youth thrown to the ~~[illegible]~~ ground his shirt was up in the back and

He had on handcuffs, and four police were standing over him. I observed white standing in front of ~~[illegible]~~ Mr Mr Diner no less than thirteen police ~~[illegible]~~ cars, and I heard from one police car, parked in the middle of main street, more cars were being sent to the scene of disturbance.

Miss Barbara Greene
August 16, 1968

I was downstairs in the Center when the talent show broke. The crowd began to leave down the stairs about 10 feet behind me. Within minutes, through the store front window, I saw the lights of several police cars.

I walked out and saw a crowd on the street - perhaps 50 people. They were reasonably quiet, not attacking the police verbally or physically. Mr. John, the Center's Director, was standing facing three policemen. They were trying to get Mr. John to go with them, and he was saying, "I'll go. Just let me calm the crowd down, get 'em inside." He identified himself as a police aide who had his hands on Mr John

I approached Patrolman Vaughn, Badge No. 1167, and I asked "What's happening?"

Patrolman Vaughn said, "Go inside."

I said, "I'm a lawyer."

He said, "The place to practice law is in court, not on the street."

I said, "I just want to know why he's being arrested."

He said, "If you don't go inside, I'll arrest you for interfering with an arrest."

This dialogue was written down by me within seconds after it occurred.

At that point, I went inside and called Central Police Headquarters.

Susan Rai, Legal Aid Society

August 21, 1968

August 21, 1968

TEL. AT 1-6161

Bayview General Hospital

MASTIC BEACH, LONG ISLAND

To: Bay Area Community Center

Center Moriches,NY-11934

Re: James Seymore 8-19-68

Sterling Place, Mastic,NY-11950

FOR SERVICES RENDERED $ 35.00

Out Patient Emergency Rm. Treatment & Xray

Diag. Check up-Mace-Xray Esopagogram

TEL. AT 1-6161

August 21, 1968

Bayview General Hospital

MASTIC BEACH, LONG ISLAND

To: Bay Area Community Center

Center Moriches, NY-11934

Re: Samuel Booker 8-19-68

MONTAUK HWY. SHIRLEY, N.Y. 11967

FOR SERVICES RENDERED

Out Patient Emergency Treatment & Xray $ 25.00

Diag. Sprain left Shoulder

Box 364
East Setauket, New York
11733

August 21, 1968

SEADFFRE
164 Madison Avenue
New York, N. Y. 10016

Dear Sirs,

We, of the Central Suffolk Women's International League for Peace and Freedom, are becoming more and more concerned over the issue of the use of Mace by the Suffolk County Police Department.

At a time when it is so important to face the problems of our era positively, the recent issuance of Mace to the department seems a step or two backwards.

We urge an investigation into the attidudes behind the seemingly indiscriminate use of Mace by our County policeman.....

Thankyou....

Carey Barnett

Carey Barnett
President
Central Suffolk
WILPF

SUFFOLK COUNTY
HUMAN RELATIONS COMMISSION
VETERANS HIGHWAY
HAUPPAUGE, N. Y. 11787

PHONE: 724-2900

ALPH R. WATKINS
CHAIRMAN

EV. ARTHUR C. BRYANT
VICE-CHAIRMAN AND
MIGRANT CHAIRMAN

OMPLAINT CHAIRMAN
KENNETH ANDERSON

DUCATION CHAIRMAN
MRS. MAE WALKER

MPLOYMENT CHAIRMAN
BURGHARDT TURNER

OUSING
ALPHONSO ANDERSON
CHAIRMAN

JOEL BECKER
VICE CHAIRMAN

EACHER RECRUITMENT
REV. FR. T. PETER RYAN
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TTY. EDWYN SILBERLING
YRELL WILSON

GEORGE PETTENGILL
EXECUTIVE DIRECTOR

PHILLIP JORDAN
JOB PROJECT DIRECTOR

MRS. VERA DUBITSKY
ASSISTANT DIRECTOR

ALBERT E. CLARKE
TRAINING DIRECTOR

August 21, 1968

U. S. Attorney General Ramsey R. Clark
U. S. Department of Justice
Washington, D. C.

Dear Attorney General Clark:

In re my telegram of yesterday, I am enclosing some of the involved people's opinions of what actually occurred.

Sincerely,

Ralph Watkins

RW:lk
Encl:

Telegram - phoned in to Western Union with Ralph Watkins approval 8-20-68

Telegram To U.S. Attorney General Ramsey R. Clark
U.S. Department of Justice, Washington, D.C.

Request investigation of use of Mace by Suffolk County Police Department in Center Moriches August 14, 1968, which exceeded that ~~XXXX~~ Department's lawful powers.

Ralph R. Watkins
Chairman
Suffolk County Human Relations Commission
Veterans Memorial Highway, Hauppauge, N.Y.
516 724-2900

1178

Carbon in Action File

~~Action File prepared for all things done while I am away.~~ L. K.

8/20/68

Western Union - Ans 5-4747

8/22/68

We the undersigned are concerned about police action and the use of Mace on August 14th, 1968, and wish an investigation of the incident by the Scholarship, Education, Defense Fund(SEDF).

1) Lillian Donahue - 2
2) Vernice Shifer
3) Patricia Raynor
4) Roberta Bukowitz
5) Annie Davis
6) Barbara Duffy
7) Gerard Donnelly
8) Hathaway Gillian
9) Elizabeth A. Krete
10) Patricia Lawry
11) Carol Ann Schembri
12) Ophelia Jefferson
13) Louise F. Carrozzi
14) Lillian Taylor
15) Lorene Hargrove
16) Ruby Peyram
17) Beatrice Anthony
18) Martha Davis

8/22/68

We the undersigned are concerned about police action and the use of Mace on August 14th, 1968, and wish an investigation of the incident by the Scholarship, Education, Defense Fund(SEDF).

1) Phyllis Beck
2) Sargent Becker
3) R. Swan
4) T. Edward Giles
5) James Duffy
6) Salvatore Nicotra
7) Doris Easterville
8) Lillian Penna
9) Richard Wilson
10) Ruby Hughley
11) Odessie Abernathe
12) Mary Lee Terry
13) Glenora Burris
14) George Burris
15) Gerald S. Levine
16) Charles H. Waide
17) Edna Linard
18) Phyllis Sotano

8/23/68

We the undersigned are concerned about police action and the use of Mace on August 14th, 1968, and wish an investigation of the incident by the Scholarship, Education, Defense Fund(SEDF).

1) Jean Corbello

2) Dorothy Trautschold

3) Elizabeth May

4) Jaynee S. Heine

5) Edgards Taylor

6) [illegible]

7) Cynthia Venerable

8) [illegible]

9) [illegible]

10) [illegible]

11) [illegible]

12) [illegible]

13) Patricia Lawry

14) Christa Curtin

15) Idea Bulback

16) Glen Winters

17) Mrs. A. McMahon

18)

August 23, 1968

TEL. AT 1-6161

Bayview General Hospital

MASTIC BEACH, LONG ISLAND

TO: Director of Youth Center-Mr. Samuel Booker

Youth Center Moriches,NY-11934

Re: Donnial Burriss-8-16-68

89 Wading River Rd., Center Moriches,NY-11934

FOR SERVICES RENDERED $ 11.00

Out Patient Emergency Treatment & Medication

Diag. Conjunctivitis O. D.

Copy II

Rec'd. 8/26/68

The Bayport Methodist Church

482 MIDDLE ROAD
BAYPORT, L. I., N. Y. 11705

CHURCH OFFICE: HR 2-0770

PARSONAGE: HR 2-0738

DAVID S. BENEDICT, PASTOR

August 23, 1968

H. Lee Dennison, County Executive
Arbutus Path, Belle Terre
Port Jefferson, New York

Dear Mr. Dennison:

I am writing this letter to you because I understand from the newspapers that you are initiating an investigation into the "Mace Incident" at the Center Moriches Community Action Center. I have some information concerning the Fifth Precinct of Brookhaven which is part of this whole situation.

In the past week, I have talked with two members of the Fifth Precinct, one a patrolman and the other an officer. This is what I learned:

1. A Black patrolman is being kept from advancing after 5 years of solid duty by the fierce prejudice of a Lieutenant and the vicious pattern of white racism being perpetuated by an Inspector. The comment was made directly to me by the Inspector that this man's wife is considered a "rabble-rouser" because she testified before the Patchogue Town Board on the Open Housing Ordinance, and that since this sort of activity was frowned on by the Police Department, this was a definite mark against this man's promotion.

2. There is a verifiable history of biased attitudes and comments made against the Negro race in the Fifth Precinct, and at one point a concerned effort to get a Negro shifted from a unit where he was not wanted.

3. In the "Mace Incident," one report referred to 'That Negro John' in a rather telling way. Other questions should be raised whether there was really provocation for calling in reinforcements at the Center Moriches CAC; Why Mace was used; Why at such close range...without warning...without follow-up against serious after-effects, etc.

It is disturbing to see such conflict erupt in Center Moriches at a time when the program being offered was such benefit to the people. I hope very much you can get to the bottom of this situation. For my part, it is clear there is a generally unhealthy racial bias rampant among members of the Fifth Precinct which needs purging if police action is going to be acceptable and helpful in building good community relations.

Sincerely yours,

David S. Benedict, District Director
Christian Social Concerns of the
Methodist Church in Nassau/Suffolk

Copies to: G. Pettengill
W. John

21 Hawkins Ave
Center Moriches, N.Y.
August 25, 1968

To Whom It May Concern -

As a member of the community of Center Moriches for the past twelve years, I would like very much to have an investigation made of the events which took place at the Neighborhood Opportunity Center on the night of August 14th.

Barbara Duffy

14 Beaver Brook Dr.
Brookhaven, NY
Aug 25, 1968

Scholarship, Education & Defense Fund
for Racial Equality
164 Madison Ave
N.Y.C, N.Y.

Dear Sirs:

As a white resident of Suffolk County for the last twelve years & one deeply concerned about the future of black-white relations in this community, I am asking your assistance in the investigation of the use of MACE by the Suffolk County Police against a group of black youths in a recent incident here.

If this kind of "happening" is allowed to go un-aired, it will be yet another blow in the destruction of our hopes - white & black alike for an America with justice for all.

Sincerely,
Beverly L. Weinstock

8/25/68

Mrs. Odessa Venerable
85 Wading River Rd.
Center Moriches, N.Y.

Scholarship, Education, and Defense fund
(S.E.D.f.)

To whom it may concern:

As an active member of the Bay Area community, I am concerned about police actions and the use of Mace on the night of August 14th, 1968. I wish for and support an investigation by the S.E.D.f. of the incident.

Sincerely,

Odessie Venerable

8/25/68
Mrs. Ruby Hughley
85 Wading River Rd.
Center Moriches, N.Y.

Scholarship, Education, and Defense Fund
(S.E.D.F.)

To whom it may concern:

As an active member of the Bay Area community, I am concerned about police actions and the use of Mace on the night of August 14th, 1968. I wish for and would support an investigation by the S.E.D.F. of the incident.

Sincerely,
Ruby Hughley

MOTHER

9 Winne Road
Center Moriches
August 25, 1968

To whom it may concern:

As a resident of Center Moriches, I am very much concerned about the flagrant use of chemical Mace by the Suffolk County Police Department in a situation locally which apparently did not require police intervention, which was steadily worsened by the high concentration of police, and which at no time justified use of Mace for crowd dispersal.

I should welcome an investigation of the recent police action at the Center Moriches Neighborhood Opportunity Center, particularly in regard to the following:

1) Why was Wilfred John arrested?

2) What attempts to disperse the crowd were made before resorting to Mace?

3) Was Mace actually sprayed on children?

4) What did police do to relieve citizens from the adverse physical effects of Mace?

5) Why does the Suffolk County Police Department use Mace when the United States Army has refused to do so, and the Federal Food and Drug Administration has not classified it as safe for use on humans?

Sincerely,

Victory Van Dyck Chase.

Victory Van Dyck Chase
(Mrs. Theodore Chase Jr)

[1968, August]

81 Woodlawn Ave.
St. James, N. Y.
11780

Scholarship, Education & Defense Fund
for Racial Equality
164 Madison Avenue
New York City, N. Y.

Dear Sirs:

By way of introduction - I am 35 yrs. old, white, middle-class house-wife with 5 children from 3 to 15 years of age. I write to implore your organization to investigate the attitudes and behavior of the Suffolk County Police Dept.

From my own observation, I am readily aware that the local police department is biased in its attitudes towards young people in general, and toward black people, in particular.

According to our local newspapers, MACE was used against many black children and young people in one of our neighboring communities.

In my experience as a resident of St. James, for 11 yrs., I find the Suffolk County Police Department becoming more biased in its attitudes toward all citizens; in particular, my black neighbors and all youngsters.

I am also aware that the local police are representitive of the local attitudes, therefore, acting accordingly. However, I'm also aware that if our police (who are white) will use MACE against our black children and young people, the time is not too far away that I will have to send my children to our local parks, wearing gas masks.

Therefore, I request your investigation into this matter in the hope, with its attendant publicity, that you can help to change some of the prevailing attitudes, and with the prayer that together or apart, we can make this a world a more wholesome home for all of our children.

Most sincerely yours,

Mary Ann Moore

Mary Ann More
(Mrs. Norman E.)

[1968, August]

To whom it may concern:

As a resident of the Bay Area, I am hereby requesting a full investigation of the incident which occurred on august 14th 1968 at the Neighborhood Opportunity Center located on Main Street in Center Moriches. I will support any investigation wholeheartedly.

signed.

Robert Chapman Offedal.

[1968, August]

Dear Sirs:

Speaking for the Executive Council of the Coordinating Council, I urge your support of a legal test of the use of Mace by the Suffolk County Police Department.

We feel the the use of such an agent, not yet cleared by the Food and Drug Administration, indicates the lack of judgement of the Department. Even more important, the manner in which Commissioner Barry announced its adoption by the Department, and its first use by them suggests that the Commissioner is regrettably insensitive to the deleterious effect on police-community relations of the use of this questionable agent.

Earlier this year our Council interviewed Commissioner Barry. We asked him at that time what plans he had for the soft control of disorders, should any occur this summer. He gave no indication that Mace was under consideration at that time, even though it seems that this must have been the case. It seems to us that on this matter, as on others that we raised, the Commissioner holds a "Black man's feelings be dammed" attitude.

Any support you can give toward bringing the Commissioner and the Department to a recognition that it must be accountable to other than itself would in my judgement be a construtive effort on your part.

Sincerely,

Andrew P. Hull

Andrew P. Hull,
Vice-Chairman

[1968, August]

To Whom It May Concern;

As a citizen of the Bay Area community, I wish to protest the incident that occured on Wednesday August 14th which involved mace and the use of force on the part of the police.

I support an investigation by SEDF of this night.

Sincerely
Kathleen Oftedal

Robert Williams [1968, August]
10 Wood St. - Brentwood, N.Y. 273-0186
Johnson & Wales Jr. College
Providence Rhode Island
Abbott Park Place

Write letter

[August, 1964]

THE BAY AREA COMMUNITY ACTION COMMITTEE

"A FEDERALLY-FUNDED PROGRAM INVOLVING LOCAL VOLUNTEER SUPPORT IN THE 'WAR ON POVERTY'"

404 MAIN STREET
CENTER MORICHES, NEW YORK, 11934

DIRECTOR
WILFRED JOHN

CHAIRMAN
CHARLES H. WAIDE

I was in town about 10:00 attending a Social Night at the Opportunity Center. I want outside at about 10:00-10:15 and was sitting in front of the bank across the street. I saw Butbh Baskerville and his girlfriend having anfargument. They went down Newins Street still arguing. About 5 minutes later I saw them coming out of the road with a police car close behind. The cop told Butch to stop but he headed towards the Center where another car with two cops already was starting towards Butch. Mr. John headed towards the Police and told them he would handle the siuation.The cops still proceeded and pushed Mr. John out of the way. Thus an argument broke out between the police and Mr. John and he was arrested. He naturally protested since he had done nothing and was pushed and shoved. The people were very mad at seeing Mr. John being abused. More police arrived on the scene and unrest stirred. People yelled not to take Mr. John away and things started to be thrown at the police. This is when the cops started to use mace which only made things worse. Many young kids, 8-16, were sprayed and received no help from the police. Joe Henderson was roughly received by the public when he went to a nearby bar to wash his eyes out. He was called names and told to get out. As Mr. John was being taken away his wife came to be with him and was thrown against a car and on the ground by the police. She was pushed around badly and without sympathy. During the violence, John Carroll,a young rather slow boy, was being beaten by police and thrown on the ground. They ripped his shirt and he was then arrested and taken away. The violence quited and many people went home.

A White
Bystander
B. Foulkes

MORICHES-MANORVILLE CENTER
404 MAIN STREET
CENTER MORICHES, N.Y.
TEL. 878-0067

SHIRLEY-MASTICS CENTER
130 MASTIC ROAD
MASTIC BEACH, N.Y.
TEL. 281-6750

On the evening of Wednesday 8/14/1968, at the Bay Area Community Action Center, 404 Main St., Center Moriches, N.Y. I was attending a talent show open house given by the center. ~~Around~~ At approximately 10:P.M I saw that some of the youngsters were getting out to see if I could get them back inside. When I got outside, I saw two Police men talking to a youth. One of the Policemen had his hand wrapped in the youth's shirt. My husband (Mr. Wayne Fisher) then came out and went over to the Police to identify himself & also to find out what the misunderstanding was about. The next thing I know, the youth fled down the alley between the center and Bakery. The Policeman then proceeded to follow and my husband and a few other youths also followed. I at this time

tried to clear the
children off the street,
but with many police
cars coming on the scene,
it was very hard to do.
I ~~sen~~ then summon for
help from the other
adults who were still upstairs.
The next thing I knew,
the two policemen (the 1st
two on scene) were
coming out of the alley
with my husband behind
them. They were pulling
him roughly and said he
was under arrest for interfering
with the arrest of another
person. My husband told
me to get the kids with
in the center or send
them home. The children
were very upset at seeing
him being arrested and
they proceeded towards him.
to find out what was
going on. Seeing that
the crowd was not
dispersing, the officer after
talking with my husband,
released him so that
he could calm down

the crowd. By this time a Sergeant came on the scene and asked officer Vaugh what was the problem, Officer Vaugh then said it was a slight disturbance and that he had arrested my husband but then had let him go to calm the crowd. Upon this the Sergeant became very belligerent and ordered my husband under arrest immediately. Patrolman Vaughn then went over to my husband, grabbed him by his right arm and placed him under arrest for not following a order. The order was to disperse the crowd. By this time another officer joined him and they proceeded to DRAG my husband, (who was not resisting) to their patrol car. By this time the crowd was getting excited at the way my husband was being treated. A group of patrol men then formed a line at the rear

end of the center and started running to their mace in this form" We have our MACE. When I saw Patrolman V. hit my husband I tried to get through. Patrolman 1105 pushed me and said ~~[illegible]~~" He didn't care who the hell I was but I wasn't going through" when I tried to talk to them again, they started spraying the MACE. They then started walking towards the people who were standing on the side lines, and squirted small amounts directly into their faces. I then notice that Patrolman V. was again roughing up my husband & I immediately went over to ask if I could go to the station house with him I, at this time had both my hands on my husbands chest. Patrolman Vaugh then picked me up by the neck and threw me on top of the Patrol car. I then went to defend my self against him. My husband was

~~then~~ as at this time handcuf
and the other Patrolman
put his night stick Defore
the chain and started twisting
it. My husband asked him
" what are you doing" ~~the~~
the Patrolmen did not answer
my husband then said " you
are burning my arm " the
officer did not reply. they
(Patrolmen) then pushed him
into the Patrol car. Instead
of taking him away Patrolman
Vaugh then preceded towards
the center to see what
else he could do. at this
time there were about
Roughly 20 or more officers on site
All of which ~~spoke with~~ had
no form of communicating
with the People. The Sargent
Badge # 283 then told Patrolman
V. to get the prisoners to
the Precint. My husband asked
me before he was taken
away, to please tell the
People to disperse because the
Police were anxious to use
their mace. When he was
taken away the mace
was then sprayed unprecedented
no one attacked the

officers but they persisted to walk towards people squirting the mace (like a child would squirt a water pistol) A Lieteanant arrived at the scene and tried to calm the people down. I feel that he did a better job of communicating with the people than any of the other police who were on the scene. He never once raised his voice and he heard every one out. When I arrived at the 5th Precint police station I was told my husband was not there. I used the phone in the station to call headquarters. Headquarters told me that he was at the 5th Precint. The officer on duty said that I told him my name was "Jones". When the Lieteanant arrived back at the Precint, Clayton Chesson, N.A.A.C.P. President and myself were allowed to see my husband

Ayder my husband was Arrested, I saw Patrolmen Vaughn strike him. At that time I went over to speak to him (my husband) to find out what was going on. I at this time was standing in front of my husband with both hands on his chest when Pt. V. Vaughn (who was standing partially behind me) grabbed me by my neck, picked m up and ~~slammed~~ threw me on top of his Patrol car (trunk) from there I fell to the ground. At no time did Patrolmen Vaughn speak to me in fact, I tried to ask him questions that he ignored completely.

September 4, 1968

Commissioner John Barry
County Center
Hauppauge, New York

Dear Jack:

My letter to you of August 28, 1968 concerning a complaint of Mrs. Sylvia John has some significant typos. There should have been a phrase preceding Mrs. John's statement as follows:

> Mrs. John alleges that, "When the policeman started to hit Mrs. John's husband, after his arrest, she went to speak with him (husband). Ptl. Vincent Vaughn grabbed her by the throat, pushed her and slammed her in his car on her back. She fell to the ground from there. At the precinct Mrs. John's request for a doctor was ignored."

Sorry it slipped by. Please accept the correction.

Sincerely,

V

Vera P. Dubitsky
Assistant Director

cc George Pettengill, Executive Director, SCHRC

VPD:plm

SCHOLARSHIP, EDUCATION AND DEFENSE FUND FOR RACIAL EQUALITY inc.
164 MADISON AVENUE
NEW YORK, N.Y. 10016
(212) 532-8216

September 24, 1968

Honorable J. Edgar Hoover
Director
Federal Bureau of Investigation
Washington, D. C.

Dear Mr. Hoover:

Enclosed are copies of statements from persons who were the victims, or parents of victims, and other witnesses in what appears to be an unprovoked incident in which the police of Suffolk County sprayed mace upon persons leaving a meeting at the Community Action Center at 404 Main Street, Center Moriches, Long Island, New York.

The questionnaires were prepared by us after we were asked to help the persons injured. The answers indicate, in our view, a possible violation of federal law by persons acting under the color of state authority.

We respectfully urge an investigation by your department, with arrests and prosecution should the evidence so indicate.

Very truly yours,

Carl Rachlin
Legal Director

le
Enclosures

Contributions are deductible for income tax purposes

▪ *president:* Andrew E. Norman ▪ *vice presidents:* William S. Ellis, Nannette Sachs ▪ *secretary:* Ezra Levin ▪ *treasurer:* Shelley Appleton ▪ *executive director:* Marvin Rich ▪ *leadership development director:* Ronnie M. Moore ▪ *legal director:* Carl Rachlin ▪ *BOARD OF DIRECTORS:* Nils R. Douglas, *chairman* ▪ James Baldwin ▪ Katrina McCormick Barnes ▪ Allan Barton ▪ Jonathan Bingham ▪ Canon James P. Breeden ▪ Robert Curvin ▪ Charlotte Devree ▪ Robert F. Drinan, S.J. ▪ Michael O. Finkelstein ▪ Doris Freedman ▪ James T. Harris, Jr. ▪ Claude Heckscher ▪ Norman Hill ▪ Arthur Kimmelfield ▪ Dr. Archie Lacey ▪ Jeremy Larner ▪ Joann List Levinson ▪ John Lewis ▪ Leon Modeste ▪ Henry Morgenthau, III ▪ Dr. William Stuart Nelson ▪ Edward Norton ▪ Richard J. Schwartz ▪ Elaine Slater ▪ Rowland Watts

SCHOLARSHIP, EDUCATION AND DEFENSE FUND FOR RACIAL EQUALITY inc.
164 MADISON AVENUE
NEW YORK, N.Y. 10016
(212) 532-8216

September 24, 1968

Honorable Ramsey Clark
Attorney General of the United States
Washington, D. C.

Honorable Sir:

Enclosed are copies of statements from persons who were the victims, or parents of victims, and other witnesses in what appears to be an unprovoked incident in which the police of Suffolk County sprayed mace upon persons leaving a meeting at the Community Action Center at 404 Main Street, Center Moriches, Long Island, New York. Copies of the above statements have been sent to Mr. J. Edgar Hoover.

The questionnaires were prepared by us after we were asked to help the persons injured. The answers indicate, in our view, a possible violation of federal law by persons acting under the color of state authority.

We respectfully urge an investigation by your department, with arrests and prosecution should the evidence so indicate.

Very truly yours,

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SCHOLARSHIP,
EDUCATION AND
DEFENSE
FUND FOR
RACIAL EQUALITY inc.
164 MADISON AVENUE
NEW YORK, N.Y. 10016
(212) 532-8216

THIS IS AN UNSIGNED STATEMENT WHICH MRS. SYLVIA JOHN SAID SHE WROTE.

CARL RACHLIN

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TO: The Interviewers who will obtain information for the annexed questionnaire concerning the SUFFOLK COUNTY "MACE" INCIDENT:

Please try to get as much information as possible from the people you interview; more information rather than less. We can always strike any information that may be unimportant. The questionnaire is intended to help you get the fullest information possible, but you should not feel limited in your interviews by the questions on the questionnaire. You may have to ask additional questions of shy people; you may have to rephrase the questions we have asked. It is important that you use your own best judgment to help us obtain as much information as possible.

It is desirable but not essential that the person interviewed formally swear to the truth of the statements in the questionnaire before a Notary Public.

PROPOSED QUESTIONNAIRE CONCERNING
SUFFOLK COUNTY "MACE" INCIDENT

1. NAME of ADULT: (ALIAS JAMES) REGINALD STWAN

2. NAME of CHILD:
   AGE of CHILD:

3. NAME of PARENT:
   ADDRESS: N. SCHOOL HOUSE RD., CENTER MORICHES

4. DATE of INCIDENT: AUG 14, 1968

5. PEOPLE WHO WERE PRESENT AT THE INCIDENT and WHO SAW THE INCIDENT (names and addresses):

CLARENCE SIMPSON. RAILROAD AVE, C. MORICHES
LOUIS HENDERSON LINCOLN BLVD. E. MORICHES
CHARLES WAIDE C. MORICHES

6. Was the Adult or the Child arrested? NO

7. What was (were) the charge(s)?

8. Has a date for trial been set?

9. What were the nature of the injuries to the child or adult? Sprayed with chemical that caused helplessness, burning sensation. Effected face, neck and other exposed areas

10. Were you told that you might need medical treatment after being sprayed by the MACE? If you were, by whom? NO

11. Was medical treatment required? ~~N~~ YES

12. Was hospitalization required? If hospitalization was required, what was the name of the hospital? What was the length of the stay in the hospital? NO

13. Names and Addresses of Doctors who saw OR treated the injuries:

TREATED BY CLIENT AT HOME.

Dates of Treatment: N/A

14. What were you ~~and your child~~ doing immediately before the incident took place?

I WAS TRYING TO ENCOURAGE PEOPLE TO RETURN INSIDE BUILDING. I WAS TALKING TO CROWD WITH BACK TO POLICE.

15. Where were you ~~and your child~~ going at the time the incident took place?

STANDING IN FRONT OF C.A.CENTER BY LEFT DOOR.

16. Exactly where did the incident take place?

BAY AREA C.A. CENTER
404 MAIN ST. CENTER MORICHES, N.Y.

17. Did you observe exactly how many policemen were present?

13 CARS - APPROX 25 POLICEMAN

18. Did you ~~or the child~~ see who sprayed the MACE?

YES

19. Do you have the name(s) or badge number(s) of the officer(s) who sprayed the MACE?

BADGE # NOT KNOW

20. Do you have the names or badge numbers of any other officers who were present?

BADGE # 1167

21. Describe in as much detail as possible exactly what happened. One youth ran upstairs in Center after returning from store and said 2 policemen wanted to talk to Wil John's downstairs. John said "Mm, let's go downstairs and see what this is all about." Upon arriving downstairs policeman instructed John to disperse ~~[illegible]~~ youths on street. John identified himself as police aid and said "I'll do it but suggest you come back in 5 minutes because you (police) bring Lee does not make it easy." I started across street to talk to youths and turned around and saw people running down alley. (P.S.)

22. What were you ~~and the child~~ doing as the MACE was sprayed?

OBSERVING THE ARREST OF WIL JOHN AND TRYING TO GO TO POLICE CAR WHERE HE WAS BEING HELD.

23. Did the police say anything before they sprayed the MACE? Did they give any kind of warning? What did they say?

NOTHING SAID. NO WARNING GIVEN

24. What did the police do in addition to spraying the MACE?

RAN TOWARD CROWD OF PEOPLE AND CONTINUED SPRAYING MACE. NO INSTRUCTIONS WERE BEING GIVEN TO CROWD BY POLICE — THEY SIMPLY SPRAYED.

21. Describe in as much detail as possible exactly what happened. One youth ran upstairs in Center after returning from store and said 2 policemen wanted to talk to Mr John's downstairs. John said "Jim, let's go downstairs and see what this is all about." Upon arriving downstairs policeman instructed John to disburse ~~crowd~~ youths on street. John's identified himself as police aid and said "I'll do it but suggest you come back in 5 minutes because you (colleg) being Lee does not make it easy." I started across street to talk to youths and turned around and saw people running down alley. (PS)

22. What were you ~~and the child~~ doing as the MACE was sprayed?

OBSERVING THE ARREST OF MR JOHN AND TRYING TO GO TO POLICE CAR WHERE HE WAS BEING HELD.

23. Did the police say anything before they sprayed the MACE? Did they give any kind of warning? What did they say? NOTHING SAID. NO WARNING GIVEN

24. What did the police do in addition to spraying the MACE? RAN TOWARD CROWD OF PEOPLE AND CONTINUED SPRAYING MACE. NO INSTRUCTIONS WERE BEING GIVEN TO CROWD BY POLICE — THEY SIMPLY SPRAYED.

I saw back alley. At rear of building, I saw 3 police, one with hand on gun and one woman crying. John suggested again that police leave and questioned officer about his hand on gun. I left scene and came in building through rear and went thru building out front door. John was asking youths to return inside. 3/4 of crowd inside. Badge # 1167 approached John from rear and attempted to arrest him. At this point crowd rushed back outside. A wedge of officers formed between Johns and crowd and he was arrested. I broke thru wedge to police car to go to John's aid and was chased by officer shouting racial epithets.

25. Did any of the police use bad language or racial names?
If yes, please give the name(s) or badge number(s) of the police, if possible.

BADGE # 1167 CALLED ME A "BLACK

26. Were any civilian public officials present at the incident?
If yes, please give their names and offices, if possible.

~~[illegible] WATKINS, [illegible] [illegible]~~

SUSAN RR1 - LEGAL AID ATTY.

OTHER COMMENTS:

Sworn to before me, this 9/7/68
day of September, 1968.

Signature

Notary Public

PROPOSED QUESTIONNAIRE CONCERNING
SUFFOLK COUNTY "MACE" INCIDENT

1. NAME of ADULT: ~~GLENORA BURRISS~~

2. NAME of CHILD: DONNIAL BURRISS
AGE of CHILD: 14 yrs

3. NAME of PARENT: GLENORA BURRISS
ADDRESS: 89 WADING RIVER RD, CENTER MORICHES

4. DATE of INCIDENT: AUG 14, 1968

5. PEOPLE WHO WERE PRESENT AT THE INCIDENT and WHO SAW THE INCIDENT (names and addresses):

ROBERT GREEN RAILROAD AVE. CENTER MORICHES

BILLY WILLIAMS - E. MORICHES (LINCOLN BLVD)
JOE HENDERSON - E MORICHES (LINCOLN BLVD)

6. Was the Adult or the Child arrested? NO

7. What was (were) the charge(s)? N/A

8. Has a date for trial been set? N/A

9. What were the nature of the injuries to the child or adult? SPRAYED WITH MACE, PUSHED & SHOVED BY POLICEMAN.

10. Were you told that you might need medical treatment after being sprayed by the MACE? If you were, by whom? NO

11. Was medical treatment required? YES

12. Was hospitalization required? If hospitalization was required, what was the name of the hospital? What was the length of the stay in the hospital?

BAYVIEW HOSPITAL - 3 HOURS AT HOSPITAL NOT ADMITTED

PROPOSED QUESTIONNAIRE CONCERNING
SUFFOLK COUNTY "MACE" INCIDENT

1. NAME of ADULT: ~~GLENORA BURRISS~~

2. NAME of CHILD: DONNIAL BURRISS
   AGE of CHILD: 14 yrs

3. NAME of PARENT: GLENORA BURRISS
   ADDRESS: 89 WADING RIVER RD, CENTER MORICHES

4. DATE of INCIDENT: AUG 14, 1968

5. PEOPLE WHO WERE PRESENT AT THE INCIDENT and WHO SAW THE INCIDENT (names and addresses):

ROBERT GREEN RAILROAD AVE. CENTER MORICHES

BILLY WILLIAMS - E. MORICHES (LINCOLN BLVD)

JOE HENDERSON - E MORICHES (LINCOLN BLVD)

6. Was the Adult or the Child arrested? NO

7. What was (were) the charge(s)? N/A

8. Has a date for trial been set? N/A

9. What were the nature of the injuries to the child or adult? SPRAYED WITH MACE, PUSHED & SHOVED BY POLICEMAN.

10. Were you told that you might need medical treatment after being sprayed by the MACE? If you were, by whom? NO

11. Was medical treatment required? YES

12. Was hospitalization required? If hospitalization was required, what was the name of the hospital? What was the length of the stay in the hospital?

BAYVIEW HOSPITAL - 3 HOURS AT HOSPITAL NOT ADMITTED

13. Names and Addresses of Doctors who saw OR treated the injuries:

DR. ~~FRANK~~ JOSEPH F. CALABRO
MAIN ST. CENTER MORICHES

Dates of Treatment: 8/15/68
8/16/68
8/17/68

14. What were you and your child doing immediately before the incident took place?

Standing out on sidewalk talking to friends

15. Where were you and your child going at the time the incident took place?

BAY AREA CAC
404 MAIN ST - CENTER MORICHES

16. Exactly where did the incident take place?

SAME AS 15

17. Did you observe exactly how many policemen were present?

30 OR 33 policemen

18. Did you or the child see who sprayed the MACE?

HE WAS A SGT.

19. Do you have the name(s) or badge number(s) of the officer(s) who sprayed the MACE?

NO

20. Do you have the names or badge numbers of any other officers who were present?

#1167

21. Describe in as much detail as possible exactly what happened.

Policeman began pushing me down street away from center. Myself and one other person. I resisted and another policeman came up and sprayed mace in my face

22. What were you and the child doing as the MACE was sprayed?

23. Did the police say anything before they sprayed the MACE? Did they give any kind of warning? What did they say? NOTHING SAID — NO WARNING

24. What did the police do in addition to spraying the MACE? PUSHED AND SHOVED

25. Did any of the police use bad language or racial names?
If yes, please give the name(s) or badge number(s) of the police, if possible.

CALLED ME A MANIAC - SAID ALL YOU MANIACS GET OFF THIS STREET.

26. Were any civilian public officials present at the incident?
If yes, please give their names and offices, if possible.

SUSAN RAI	LEGAL AID ATTY
WIL JOHN	DIRECTOR BACAC
CHAS. WAIDE	CHAIRMAN BOARD BACAC.

OTHER COMMENTS:

Sworn to before me, this 9/7/68
day of September, 1968.

Notary Public

Donnal Burriss
Signature

PROPOSED QUESTIONNAIRE CONCERNING
SUFFOLK COUNTY "MACE" INCIDENT

1. NAME of ADULT: [redacted] Odessa Venerable

2. NAME of CHILD: Beverly Venerable
   AGE of CHILD: 18

3. NAME of PARENT: Odessie Thomas
   ADDRESS: 85 Winding River Rd

4. DATE of INCIDENT: Aug. 14.

5. PEOPLE WHO WERE PRESENT AT THE INCIDENT and WHO SAW THE INCIDENT (names and addresses):
   Ronnie Booker - Montauk Highway - Shirley
   Canary Burriss - Montauk Highway - Shirley
   Ophelia Jefferson - Railroad Avenue - Center Moriches

6. Was the Adult or the Child arrested? No

7. What was (were) the charge(s)? None

8. Has a date for trial been set? No

9. What were the nature of the injuries to the child or adult?
   Eyes burning - headache
   stomack upset

10. Were you told that you might need medical treatment after being sprayed by the MACE? If you were, by whom?
    No

11. Was medical treatment required? Yes

12. Was hospitalization required? If hospitalization was required, what was the name of the hospital? What was the length of the stay in the hospital?
    Bayview Hospital

13. Names and Addresses of Doctors who saw OR treated the injuries:
Calabro-Main Street-C.M.

Dates of Treatment: Aug. 15

14. What were you and your child doing immediately before the incident took place?
I (Mother) was home.
Child at incident.

15. Where were you and your child going at the time the incident took place?
I was going no place. I was watching TV. my child was going to see what was happening.

16. Exactly where did the incident take place?
In front of Bay Area Community.

17. Did you observe exactly how many policemen were present?
At least 20-25.

18. Did you or the child see who sprayed the MACE?
The policemen.

19. Do you have the name(s) or badge number(s) of the officer(s) who sprayed the MACE?
No.

20. Do you have the names or badge numbers of any other officers who were present?
No

21. Describe in as much detail as possible exactly what happened.

I only know what I read in newspaper & was told.

22. What were you and the child doing as the MACE was sprayed?

I was home.
My child was being sprayed.

23. Did the police say anything before they sprayed the MACE? Did they give any kind of warning? What did they say?

No!!

24. What did the police do in addition to spraying the MACE?

Bop with sticks. Shove around.

25. Did any of the police use bad language or racial names?
If yes, please give the name(s) or badge number(s) of the police, if possible.

No!

26. Were any civilian public officials present at the incident?
If yes, please give their names and offices, if possible.

Susan Ryin

OTHER COMMENTS:

I don't think MACE Should of been used.

Sworn to before me, this 11 day of September, 1968.

[redacted] O. Venerable
Signature

Notary Public

PROPOSED QUESTIONNAIRE CONCERNING
SUFFOLK COUNTY "MACE" INCIDENT

1. NAME of ADULT:

2. NAME of CHILD: Beverly Venerable
AGE of CHILD: 13

3. NAME of PARENT: Odessie & Thomas
ADDRESS: 85 Wading River Road

4. DATE of INCIDENT: August 14th

5. PEOPLE WHO WERE PRESENT AT THE INCIDENT and WHO SAW THE INCIDENT (names and addresses):
Juanita Duffy - Hawkins Road - Center Moriches
Joseph Henderson - Lincoln Blvd. - East Moriches
Jessie Cox - 335 Railroad Avenue - Center Moriches
Donnia Burriss - 44 Wading River Rd. - Center Moriches
Robert Bridgette - Railroad Ave - Center Moriches

6. Was the Adult or the Child arrested? NO

7. What was (were) the charge(s)? NO

8. Has a date for trial been set? NO

9. What were the nature of the injuries to the child or adult?
Eyes burning - headaches
stomach upset

10. Were you told that you might need medical treatment after being sprayed by the MACE? If you were, by whom? NO

11. Was medical treatment required? YES

12. Was hospitalization required? If hospitalization was required, what was the name of the hospital? What was the length of the stay in the hospital?
Bayview Hospital - : - :

13. Names and Addresses of Doctors who saw OR treated the injuries:

CALABRO-

Dates of Treatment: August 15th.

14. What were you and your child doing immediately before the incident took place?

I had just finished doing my part in the program.

15. Where were you and your child going at the time the incident took place?

I was coming down-stairs to see what was going on.

16. Exactly where did the incident take place?

When mace was being used it took place at the Bay Area Opportunity Center.

17. Did you observe exactly how many policemen were present?

I think atleast 20 or 21.

18. Did you or the child see who sprayed the MACE? I could place the policeman.

19. Do you have the name(s) or badge number(s) of the officer(s) who sprayed the MACE?

No!

20. Do you have the names or badge numbers of any other officers who were present?

No!

21. Describe in as much detail as possible exactly what happened.

In this half I looked out the window as the police began to hold Mr. Wilfred John. I went down-stairs (outside) to see what was happening. I see Mr. John & heard him say let me get my people inside please. Everybody was almost inside, I didn't know. A cop throw Mrs. Sylvia John against a nearby car. Then thats when things started to get bad. Fellow were arguing out of the crowd. The cops were hitting with their clubs & shoving. I left when Dennis Carroll was arrested.

22. What were you and the child doing as the MACE was sprayed?

My & Juanita Duffy were trying to get the kids that were there, home or some place. But me and Juanita was actually sprayed.

23. Did the police say anything before they sprayed the MACE? Did they give any kind of warning? What did they say? No!!!

24. What did the police do in addition to spraying the MACE?

They were using their clubs for hitting to keep people away from them, and shoving. Using their guns. I heard some shots also.

25. Did any of the police use bad language or racial names?
If yes, please give the name(s) or badge number(s) of the police, if possible.

No!

26. Were any civilian public officials present at the incident?
If yes, please give their names and offices, if possible.

Susan Ryia

OTHER COMMENTS:

This was used first time I understand. Well I don't think it should of been used NOT YESS ~~at~~ it was really prove.. A policman at the hospital said he sprayed it on his little child, their was no effect, on his hand. Who knows it might just effect us....

B. Vinerable

Sworn to before me, this 11th day of September, 1968.

B. Vinerable
Signature

Notary Public

PROPOSED QUESTIONNAIRE CONCERNING
SUFFOLK COUNTY "MACE" INCIDENT

1. NAME of ADULT: Corrine Seymour

2. NAME of CHILD:
AGE of CHILD:

3. NAME of PARENT:
ADDRESS:

4. DATE of INCIDENT: August 14, 1968

5. PEOPLE WHO WERE PRESENT AT THE INCIDENT and WHO SAW THE INCIDENT (names and addresses):
Charles Waide, Martin Beach
Betty Kriete,
Gertrude Howard, Frowein Rd., Center Moriches
Lillian Donohue, Candidd Drive, Shirley
Vernice Pfiffer, Main St., Center Moriches
Jimmy Swan, N. Schoolhouse Rd. Manorville

6. Was the Adult or the Child arrested? none

7. What was (were) the charge(s)?
none

8. Has a date for trial been set? none

9. What were the nature of the injuries to the child or adult?
none

10. Were you told that you might need medical treatment after being sprayed by the MACE? If you were, by whom?
no

11. Was medical treatment required?
no

12. Was hospitalization required? If hospitalization was required, what was the name of the hospital? What was the length of the stay in the hospital?
no

13. Names and Addresses of Doctors who saw OR treated the injuries:

none

Dates of Treatment:

none

14. What were you and your child doing immediately before the incident took place?

Enjoying the entertainment until refreshments were served + gathered up my children.

15. Where were you and your child going at the time the incident took place?

We remained in the building until the Youth Counciler escorted my children and I to my car.

16. Exactly where did the incident take place?

I was inside the building - at one time I looked out the window and saw about six policemen

17. Did you observe exactly how many policemen were present?

no

18. Did you or the child see who sprayed the MACE?

no

19. Do you have the name(s) or badge number(s) of the officer(s) who sprayed the MACE?

no

20. Do you have the names or badge numbers of any other officers who were present?

one officer's badge number was 1115

21. Describe in as much detail as possible exactly what happened.

I did not see the mace being used - just the children yelling and confusion could be heard.

22. What were you and the child doing as the MACE was sprayed?

23. Did the police say anything before they sprayed the MACE? Did they give any kind of warning? What did they say?

24. What did the police do in addition to spraying the MACE?

I made a statement to the legal aid lawyer, Mr Munsell in regards to the policeman with badge # 1115.

25. Did any of the police use bad language or racial names?
If yes, please give the name(s) or badge number(s) of the police, if possible.

26. Were any civilian public officials present at the incident?
If yes, please give their names and offices, if possible.

Rev. Giles

Legal Aid lawyer

OTHER COMMENTS:

Sworn to before me, this 19th
day of September, 1968.

Notary Public

Carrie Seymour
Signature

PROPOSED QUESTIONNAIRE CONCERNING
SUFFOLK COUNTY "MACE" INCIDENT

1. NAME of ADULT: Ruby Hughley

2. NAME of CHILD: James & Kerry Hughley
   AGE of CHILD: 15 + 14

3. NAME of PARENT: Ruby Hughley
   ADDRESS: 84 Wading River Rd. C. Moriches.

4. DATE of INCIDENT: August 14, 1968

5. PEOPLE WHO WERE PRESENT AT THE INCIDENT and WHO SAW THE INCIDENT (names and addresses):
   Francis Walkins - Youth Coordinator
   Ronnie Booker - Youth Counselor - N.O.C.
   Susan Rai - Legal Aid
   Ophelia Jerry - Corrine Seymour - Community Aide
   Georgia Pegram - Silas Baskerville
   Gertrude (Gregg) Howard

6. Was the Adult or the Child arrested? No.

7. What was (were) the charge(s)? —

8. Has a date for trial been set?

9. What were the nature of the injuries to the child or adult?
   Sudden burning of eyes - Headache
   Rest broken

10. Were you told that you might need medical treatment after being sprayed by the MACE? If you were, by whom? No -

11. Was medical treatment required? ~~Yes~~ Following day they were taken to hospital for treatment that no one know how to administer.

12. Was hospitalization required? If hospitalization was required, what was the name of the hospital? What was the length of the stay in the hospital? No

13. Names and Addresses of Doctors who saw OR treated the injuries:
Dr. Frank Calabro, Jr.
Other house-doctor.

Dates of Treatment: August 15/68

14. What were you and your child doing immediately before the incident took place?
Watching talent show -

15. Where were you and your child going at the time the incident took place?

16. Exactly where did the incident take place?
Bay Area Neighborhood Opportunity Center

17. Did you observe exactly how many policemen were present?
15-25

18. Did you or the child see who sprayed the MACE?
Police

19. Do you have the name(s) or badge number(s) of the officer(s) who sprayed the MACE?
No.

20. Do you have the names or badge numbers of any other officers who were present?
No.

21. Describe in as much detail as possible exactly what happened.

We were enjoying talent show when we heard there was an argument between a couple of kids and was assured that Mr. John would take care of it. Police came. Someone yelled "They've got Mr. John!" We all went down. Complaints of eyes burning (Crowd consisted of just about children from babies up). Police were in bickering mood + were challenging crowd. Continued to harass the Director, Wilfred John. After his arrest Police continued to come to the scene + were in a veering mood. Children were frightened of police and had a complete night of insecurity.

22. What were you and the child doing as the MACE was sprayed?

I had brought 13 children from ages 5-15. All were scattered about and watching police action. I was trying to gather children to return them home.

23. Did the police say anything before they sprayed the MACE? Did they give any kind of warning? What did they say?

I didn't hear any warning. They didn't seem to be regarding kids presence.

24. What did the police do in addition to spraying the MACE?

Cursed
incited crowd
Didn't seem to be trying to calm crowd.

25. Did any of the police use bad language or racial names?
If yes, please give the name(s) or badge number(s) of the police, if possible.

Yes.

26. Were any civilian public officials present at the incident?
If yes, please give their names and offices, if possible.

Susan Rai - Legal Aid
Francis Waitkoff
Ronnie Sookes
Charles Waide

OTHER COMMENTS:

Mace shouldn't be used on children. Neither should police ~~[illegible]~~ intervene in private affairs that are under control.
They also gave children a bad conception of their position - making (Kids) them resent their position

Sworn to before me, this _____
day of September, 1968.

_____
Notary Public

Mrs. Ruby Hughsley
Signature

PROPOSED QUESTIONNAIRE CONCERNING
SUFFOLK COUNTY "MACE" INCIDENT

1. NAME of ADULT: Gorgia Badgett

2. NAME of CHILD: Robert Badgett
   AGE of CHILD: 13

3. NAME of PARENT:
   ADDRESS: Railroad avenue center moriches New York

4. DATE of INCIDENT:

5. PEOPLE WHO WERE PRESENT AT THE INCIDENT and WHO SAW THE INCIDENT (names and addresses):

6. Was the Adult or the Child arrested? NO

7. What was (were) the charge(s)? NO

8. Has a date for trial been set? —

9. What were the nature of the injuries to the child or adult?

   SPREAD IN eyes with mase

10. Were you told that you might need medical treatment after being sprayed by the MACE? If you were, by whom? NO

11. Was medical treatment required?

    Yes

12. Was hospitalization required? If hospitalization was required, what was the name of the hospital? What was the length of the stay in the hospital? no

13. Names and Addresses of Doctors who saw OR treated the injuries:

Doctor Cabrro

Dates of Treatment:

August 15

14. What were you and your child doing immediately before the incident took place?

watching the talent show

15. Where were you and your child going at the time the incident took place?

16. Exactly where did the incident take place?

outside of the NOC center

17. Did you observe exactly how many policemen were present?

about 19

18. Did you or the child see who sprayed the MACE?

yes

19. Do you have the name(s) or badge number(s) of the officer(s) who sprayed the MACE?

no

20. Do you have the names or badge numbers of any other officers who were present?

no

21. Describe in as much detail as possible exactly what happened.

I was up stairs and then somebody say that somebody was arguing then I Came down stairs then I got spread then I went up stairs and about five min later I came back down and saw two cops grab mr John then I went to car with my mother

22. What were you and the child doing as the MACE was sprayed?

going to the car

23. Did the police say anything before they sprayed the MACE? Did they give any kind of warning? What did they say? no

24. What did the police do in addition to spraying the MACE? he didn't see it

25. Did any of the police use bad language or racial names?
If yes, please give the name(s) or badge number(s) of the police, if possible.

I didn't hear any

26. Were any civilian public officials present at the incident?
If yes, please give their names and offices, if possible.

OTHER COMMENTS:

Sworn to before me, this _____
day of September, 1968.

Robert Badgett
Signature

_____
Notary Public

PROPOSED QUESTIONNAIRE CONCERNING
SUFFOLK COUNTY "MACE" INCIDENT

1. NAME of ADULT: Samuel Ronald Booker

2. NAME of CHILD:
   AGE of CHILD:

3. NAME of PARENT: Shirley Moter
   ADDRESS: Montauk Hwy., Shirley, N.Y.

4. DATE of INCIDENT: Aug. 14, 1968

5. PEOPLE WHO WERE PRESENT AT THE INCIDENT and WHO SAW THE INCIDENT (names and addresses):

6. Was the Adult or the Child arrested? No

7. What was (were) the charge(s)? None

8. Has a date for trial been set? None

9. What were the nature of the injuries to the child or adult? None

10. Were you told that you might need medical treatment after being sprayed by the MACE? If you were, by whom? No.

11. Was medical treatment required? Not for MACE, but for physical. My eyes cleared by themselves.

12. Was hospitalization required? If hospitalization was required, what was the name of the hospital? What was the length of the stay in the hospital?
Bayview Hospital (Bruised shoulder only)
Mastic Beach, N.Y.

(21)

that and about half an hour the street was clear. and from here we went to the 5th precient.

remarks

the police department did not have any supervision or control over themselves what so ever. and they promated a calm situation into voilence. I saw for myself that more was spread into fours of youths from the distance not more than five feet away

13. Names and Addresses of Doctors who saw OR treated the injuries:

Joseph Calabro

Dates of Treatment:

THIRD DAY AFTER INCIDENT.

14. What were you and your child doing immediately before the incident took place?

UPSTAIRS IN THE NOC OFFICE, BECAUSE I AM THE YOUTH COORDINATOR.

15. Where were you and your child going at the time the incident took place?

DOWNSTAIRS ON THE SIDEWALK TRYING TO KEEP PEACE.

16. Exactly where did the incident take place?

IN FRONT OF THE NOC OFFICE

17. Did you observe exactly how many policemen were present?

18. Did you or the child see who sprayed the MACE? YES

~~[illegible]~~ 1015 AND 1167

~~(OR 1051)~~

19. Do you have the name(s) or badge number(s) of the officer(s) who sprayed the MACE?

#1015 (OR 1051) AND 1167

20. Do you have the names or badge numbers of any other officers who were present?

and a bike was thrown at the officer and mace was used slightly without any warning the pulled Mr John to the car and hand cuff him and while he was hand cuff 1167 and other officer beat him in the face with his fist other officer hit him on the shoulder with a night stick I was trying to calm the people down and stop the officer from beating Mr John and stop the people fighting when Mrs John went over to stop the officer from beating husband 1167 thrown her down by her neck and that was the first time I saw Mr John struggle I told the cops to turn him loose and he would get in the car they turned him loose he got in the car and I looked over and saw them beating Louis Carol I asked them to stop beating him and if he was under arrest because he had hand cuffs on. To take him to the car and get out of here so I could calm the people down and they left at that time a lieutenant and he asked who was in charge here I told him I was and I suggested that if he removed the cops I would remove the people so he did

21. Describe in as much detail as possible exactly what happened.

I was looking out of the up stairs window when I heard Mr John say wait a mintue and I saw him running and I han down stairs and down the alley and Mr John and a offiecr had two South in a corner police was ~~so~~ telling the officer to put his John away and he wouldtalk to the South and the police officer told him to put his guns and Mr John said that I am a police and these are my South and can police aide the satutaion of gun would leave hands and put your guns away and the police offiecr told him that he was under arrest. I was trying to control the people at the time over

22. What were you and the child doing as the MACE was sprayed?

23. Did the police say anything before they sprayed the MACE? Did they give any kind of warning? What did they say? NONE (WE DIDN'T KNOW WHAT IT WAS)

24. What did the police do in addition to spraying the MACE?

the swang night stick they beat people in the face and pull out their guns.

(21) and Mr John said what are you
arresting me for and the officer said
what difference does it make and I said
to the officer what are you arresting him for
and he say to me (who the hell are you)
and I told him that
~~Cou~~ Courtanator and I am Mr Booker South
know why his being arrested the officer told
me it didn't make any difference he was
underarrested and I said you might as well
arrest me to because I'm ~~asking~~ his assistant
and they though Mr John against the wall a few
of the South that gathered in the alley started
at the officer and Mr John and I kept them
back and told them no ~~a~~ violence I told
the officer that we should go out of the
alley and try and talk this over ~~on~~ going
and of the alley Mr John said that if they
would take his word as a man he would
talk to the people and get them to go home
and he would go to the police station as
soon as he cared close the building.
so the officer turned him loose and he
started to send the people away and badge
~~[illegible]~~ 1167 grabed him from the back
and the other officer from the front
and pushed him up against the building
and the crowd came back and fight started
over

25. Did any of the police use bad language or racial names?
If yes, please give the name(s) or badge number(s) of the police, if possible.

I went with my Daymore and her family to her car and while I was in the alley badge 1015 came running back and said what the hell are you trying to do and I said nothing and he pushed me up on the ~~[illegible]~~ car and my Daymore and her wife made him stop

26. Were any civilian public officials present at the incident?
If yes, please give their names and offices, if possible. Yes

Leon Wonsa

OTHER COMMENTS:

Sworn to before me, this _____
day of September, 1968.

Samuel R Booker
Signature

Notary Public

PROPOSED QUESTIONNAIRE CONCERNING
SUFFOLK COUNTY "MACE" INCIDENT

1. NAME of ADULT: ~~Louis~~ Emma and ~~Joseph~~ Lewis Henderson

2. NAME of CHILD: Joseph Henderson
   AGE of CHILD: 15

3. NAME of PARENT:
   ADDRESS: PO Box 88, Lincoln Blvd., East Moriches, 878-1803

4. DATE of INCIDENT: Aug. 14, 1968

5. PEOPLE WHO WERE PRESENT AT THE INCIDENT and WHO SAW THE INCIDENT (names and addresses):
   1) Leroy Baskerville
   2) Silas "
   3) Dennis Terry
   4) ~~Lou~~ Lewis Henderson

6. Was the Adult or the Child arrested?

7. What was (were) the charge(s)?

8. Has a date for trial been set?

9. What were the nature of the injuries to the child or adult? Maced in the eyes. Eyes burned, couldn't see.

10. Were you told that you might need medical treatment after being sprayed by the MACE? If you were, by whom? Police did not offer any medical assistance.

11. Was medical treatment required? Yes. Joseph's father washed his eyes out after the incident. The next day Joseph saw the Doctor, but was not suffering after effect. Doctor said that there was no more to be done for him.

12. Was hospitalization required? If hospitalization was required, what was the name of the hospital? What was the length of the stay in the hospital?
   Bayview Hospital was where he was examined Aug. 15.

13. Names and Addresses of Doctors who saw OR treated the injuries: Can't remember ~~Dr.~~ Doctor's name. (Fran Watkins would know)

Dr. Joseph Calabro
Main Street
Center Moriches

Dates of Treatment: Aug. 15

14. What were you and your child doing immediately before the incident took place?
Joseph was standing on sidewalk. An officer was pushed toward him and stumbled into Joseph. Another officer then came up to Joseph and held the MACE can about 3 feet from his face and sprayed him. This officer did not say anything before he sprayed. Joseph was at the center as a member of the band that was entertaining at the talent show.

15. Where were you and your child going at the time the incident took place?
Joseph came down ~~from~~ from ~~top~~ upstairs to see what was happening

16. Exactly where did the incident take place? On the sidewalk directly in front of the Community center.

17. Did you observe exactly how many policemen were present? [redacted] At the time Joseph was sprayed there were about five policemen around. Later there were 30 or more ~~policemen~~ policemen

18. Did you or the child see who sprayed the MACE? Yes. but couldn't recognize the officer who sprayed him.

19. Do you have the name(s) or badge number(s) of the officer(s) who sprayed the MACE?
No

20. Do you have the names or badge numbers of any other officers who were present?
1167, 1303, 294, 1326, 1303

21. Describe in as much detail as possible exactly what happened. Joseph was coming down stairs to see what was happening. A policeman stumbled toward him. ~~The~~ The officer had apparently been pushed. At that moment another policeman walked up to Joseph and sprayed him in the face, holding the can about 3 feet from his face. He gave no prior warning, did not ask him to move on, or say anything to him at all before he sprayed Joseph

22. What were you and the child doing as the MACE was sprayed? Mr. Henderson was coming down the street from the Longdaland Hotel. He then saw the incident as described above when Joseph was sprayed.

23. Did the police say anything before they sprayed the MACE? Did they give any kind of warning? What did they say?

No

24. What did the police do in addition to spraying the MACE?

25. Did any of the police use bad language or racial names?
If yes, please give the name(s) or badge number(s) of the police, if possible.

Joseph didn't hear any bad language, but Mr. Henderson heard one police man say to another, "This stuff really works. Did you see those Black bastards run?"

26. Were any civilian public officials present at the incident?
If yes, please give their names and offices, if possible.

OTHER COMMENTS:

Sworn to before me, this _____
day of September, 1968.

_____
Notary Public

Lewis Henderson

~~Joseph Henderson~~
Signature

PROPOSED QUESTIONNAIRE CONCERNING
SUFFOLK COUNTY "MACE" INCIDENT

1. NAME of ADULT: Ophelia Jefferson (Mrs.)

2. NAME of CHILD: James Hughley Jr. + Terry Hughley
AGE of CHILD: (Under 15)

3. NAME of PARENT: Mrs. Ruby Hughley
ADDRESS: 85 Wading River Rd.
Center Moriches N.Y.

4. DATE of INCIDENT: August 14, 1968

5. PEOPLE WHO WERE PRESENT AT THE INCIDENT and WHO SAW THE INCIDENT (names and addresses):

Miss Queen Terry
101 Brookfield Acres
C. Moriches N.Y.

Mrs. Ruby Hughley
85 Wading River Rd.
C. Moriches, N.Y.

Miss Ruby Bennett
C. Moriches, N.Y.

Mrs. Thomas Watkins (Youth Co-ordinator)

Mrs. Susan Rai (Legal Aid)

Mr. Charles Ward (Chairman of B.of.)

Rev. Biles, Mr. Gay Levine

6. Was the Adult or the Child arrested? No

7. What was (were) the charge(s)?

8. Has a date for trial been set?

9. What were the nature of the injuries to the child or adult?
Burning of the eyes, headache

10. Were you told that you might need medical treatment after being sprayed by the MACE? If you were, by whom?
No, following day, the children were told to go to doctor by the director. Mr. Wilfred Jakes.

11. Was medical treatment required?
Yes

12. Was hospitalization required? If hospitalization was required, what was the name of the hospital? What was the length of the stay in the hospital? No

13. Names and Addresses of Doctors who saw OR treated the injuries:
Dr. Frank ~~Cather~~ Calabro + assistance.

Dates of Treatment: August 15, 1969

14. What were you and your child doing immediately before the incident took place?
I ~~was~~ was inside watching the show.

15. Where were you and your child going at the time the incident took place?

16. Exactly where did the incident take place?
Outside the NOC of C.M.

17. Did you observe exactly how many policemen were present? No

18. Did you or the child see who sprayed the MACE? The police

19. Do you have the name(s) or badge number(s) of the officer(s) who sprayed the MACE?
No

20. Do you have the names or badge numbers of any other officers who were present? No

21. Describe in as much detail as possible exactly what happened.

~~[illegible]~~ After about 2 hours of the same wonderful entertainment. There suddenly were someone saying "They've (the policemen) got Mr. John". Then everybody went downstairs to see what was going on. At this point I start gathering my little cousins. When we came out of the building I saw some policemen spraying something among the crowd of people consisting of children & adults. In the process of gathering the children I heard Mr. Wilfred John ask the policemen to leave because he could handle every thing whereas the policemen were causing a scene. Having this time more policemen were arriving.

We took the children home and came back. As we arrived I saw a policeman chasing a young negro and calling him racial names. The remainder of the policemen were wandering through the crowd which had dispersed immensely as though they were waiting for something with their hands on their guns & as I could see they ~~[illegible]~~ had that horrible mace (which I later learned) which they had used on the children as well as adults as though it was a water pistol, in their hand.

22. What were you and the child doing as the MACE was sprayed?

23. Did the police say anything before they sprayed the MACE? Did they give any kind of warning? What did they say?

I didn't hear anything

24. What did the police do in addition to spraying the MACE?

They were calling violent racial names, and chasing their victims.

25. Did any of the police use bad language or racial names? Yes
If yes, please give the name(s) or badge number(s) of the police, if possible.

26. Were any civilian public officials present at the incident?
If yes, please give their names and offices, if possible.

Mrs. Frances Walkin - Youth Co-ordinator
Mrs. Susan Rai - Legal Aid
Mr. Charles Nail - Chairman of Board
Rev. Mr. Giles
Mrs. Gay Levine

OTHER COMMENTS:

The use of Mace should be banned.
We are all humans, not animals.

Sworn to before me, this _____
day of September, 1968.

_____
Notary Public

Mrs. Ophelia Jefferson
Signature

PROPOSED QUESTIONNAIRE CONCERNING
SUFFOLK COUNTY "MACE" INCIDENT

1. NAME of ADULT: Gertrude Howard

2. NAME of CHILD: ~~Gerogory~~ Gegrory Howard
AGE of CHILD: 17

3. NAME of PARENT:
ADDRESS: Frowein ave Centermoriches NY

4. DATE of INCIDENT:

5. PEOPLE WHO WERE PRESENT AT THE INCIDENT and WHO SAW THE INCIDENT (names and addresses):

6. Was the Adult or the Child arrested? No

7. What was (were) the charge(s)? No

8. Has a date for trial been set? No

9. What were the nature of the injuries to the child or adult?

10. Were you told that you might need medical treatment after being sprayed by the MACE? If you were, by whom? No

11. Was medical treatment required?
No

12. Was hospitalization required? If hospitalization was required, what was the name of the hospital? What was the length of the stay in the hospital? No

13. Names and Addresses of Doctors who saw OR treated the injuries:

Dates of Treatment:

14. What were you and your child doing immediately before the incident took place?

Setting down sister to the show

15. Where were you and your child going at the time the incident took place?

16. Exactly where did the incident take place?

in front of N.O.C.

17. Did you observe exactly how many policemen were present?

about 15 or 20

18. Did you or the child see who sprayed the MACE? No

The police

19. Do you have the name(s) or badge number(s) of the officer(s) who sprayed the MACE?

No

20. Do you have the names or badge numbers of any other officers who were present?

No

21. Describe in as much detail as possible exactly what happened.

I was trying to get the youth together and get them to safty so I didnt see much of what happen

22. What were you and the child doing as the MACE was sprayed?

I was on the other side of the Street.

23. Did the police say anything before they sprayed the MACE? Did they give any kind of warning? What did they say? No

24. What did the police do in addition to spraying the MACE?

25. Did any of the police use bad language or racial names?
If yes, please give the name(s) or badge number(s) of the police, if possible.

I did not here anything -

26. Were any civilian public officials present at the incident?
If yes, please give their names and offices, if possible.

Mr Ryan Legal aid

OTHER COMMENTS:

Sworn to before me, this _____
day of September, 1968.

Gertrude Howard
Signature

_____
Notary Public

Rev. Biles. Pastor of C. M. Met. Church

Joseph Henderson	age	15 – Lincoln Blvd E. M
Hennie Cruz	"	13 – Henton Place Masic
Billie Cruz	"	15 – " " "
Ronnie Pasthall	"	17 – Trowers ave C. M
Wanita Huffey	"	18-4. Ocean Ave C. M.
? Venerable	"	8.yrs Wading Riv. Rd C. M.
Melvin Russell	"	12 – Trowers Rd C. M.
Billie Williams	"	15 Lincoln Blvd E. M
Francis Swan	adult	Schoolhouse Rd Manoville
Reginald Swan	10	" " "

A. Faye Watterson - I had just been outside and walked back in, sit on right hand were outside, I sat down and started to talk to Mrs. Rai Lawyer from Legal Aide who was speaking at the meeting about Legal Aide, I was sitting in front of a large picture close window, the next thing one knew I saw a police car pull up, then a lot of people running down stairs into the street. A woman then said Ike wants you all to stay inside, I got up and looked out and as I looked most of the people had went back, two policemen had Mr. John taking him across the street. And he was leaned against the police car, I then went back inside and everyone inside come out and I called Mrs. Rai I said to her you had better go outside because a whole crowd of people went outside again, we went out and stood at the police's elbow, Mrs. Rai asked why are you arresting him, I am a Lawyer he then said stoke take

Landcliff on the John. There were policemen standing behind 1167 and 1137 Policemen. People were going inside and Patrolman Vaugh agitated the situation and would not let it calm down. I saw then may a man and handcuff him he was not involved.

B. Walter Marshall - First I saw when the fellow pulled his pistol and the other fellow tried to stop him from shooting into the alley where there were kids. then they grabbed another fellow and put him on the ground and they mugged him and they tried to manhandle the Director of the building they slammed him against the wall saying he was under arrest.

C Juanita Duffy - I saw that the police did not mark anyone's eyes who had been sprayed with mace also there were young kids who were hit by the mace an youngster was Jerry Hughley.

[illegible] — I saw the mace coming and I turned my back trying to avoid it my eyes were stinging because I was sprayed on the side of my face. I was standing less than three when sprayed from the office. As I know I was not sprayed at me.

(E) Raymond Sheffey — I was standing outside trying to get the people back inside ~~[illegible]~~ then the police started spraying the mace.

(F) Lewis Henderson — when I went back the commotion was in the alley ~~[illegible]~~ I then went back to see what was going on in the alley and Mr. John was ~~[illegible]~~ telling them I can take care of things and you (Police) had better get out of here, because everything was happening, I was telling the guys to take it easy. The police then got out and then pushed Mr. John against the building and said you are under arrest. He said okay you are going to put handcuffs on him

Frank Simpson - when trying to stop fighting I was discriminated and brutalized. I can truly say the officers were brutal to the young and old people. An officer then chased me down the road with his gun out; also my girl was knocked down by an officer named Vines.

James Simpson - I saw two officers pulling guns and pointing them point blank at people and some other officers were walking around picking shells up from the ground.

Clarence Simpson - I saw a fellow name Louise Carroll getting mugged by four policemen and I was sprayed with mace three times while trying to get kids into the building. Three different officers sprayed me, this was done while I walked toward the bakery next door to get some kids to take them inside

Statement made by James Seymour
age 23

The police was spraying mace
indiscriminately, and Mr. John was
not resisting arrest as the
police did, and Mr John was
acting ~~not accordin~~ according
to his position.

The police were spraying
mace indiscriminately; It
Reminded me of a child
who had just received
a new toy — At first
he is very curious
about the instrument
and attempts to use
it to obtain enjoyment
and satisfaction.

(2) Segure cont'd

But for the police — men, it seemed the luster never wore off. They continued to fumigate the air with the chemical irregardless of who they were spraying. Personally, I feel that if this is the type of leadership and responsibility that the black populace — or for that matter any community has to be exposed to, then we are in trouble and there is a tremendous need for the so-call protectors of life and property to ~~[illegible]~~ reassess

(3) Seymour cont'd

Their role in relation to the people that they serve because a Badge is not a warrant to abuse.

1167 - Patrolman Vaughan
1137 -

Johns - let me go calm down, etc

Susan Rai
631-6155

I asked what was happening
He said go inside
I said I'm a lawyer
He: Place to practice law is in court
not on st
I: I just want to know why he's being arrested
He: If you dont go inside I'll arrest you
for interfering w/ an arrest
Juanita -
Giles - hit by mace

Charles Backfish - saw cop pull gun & run down
727-0686 So St, Manorville
alley after bottle came out of window

Samuel Booker - 10:15
works at Bayshore
went to walk Mrs Seymour + 3 kids
back to car. Cop pushed him against car -
had gun + nightstick out

N. Grey

Mr and Mrs Maurice Sumpter

A young man was standing outside with his girlfriend and the police drove up and started calling the young man. The youth then started walking down the alley and the police officer reached for his gun and started down the alley. Then Mr. John came out of the building and told the officer he didn't have to use the gun. The officer said the kid was under arrest, but refused to say why. Mr. John said he could handle the situation then the officer threw the handcuffs on Mr. Johns arm. Mr John told us to go back, then the officer

pushed Mr. John up against
the garage. After this encounter
(officers south) started going back
towards the front of the building.
When we got to the front of
the building there were 10 more
police who were taking Mr. John
into custody. Mr. John tries
to go back upstairs & Mr. John
followed us, after the sergeant drove
drove up and asked "is this the
one" the officers replied "but he
would not come". The sergeant &
the other officers threw Mr. John down
to the ground & had him in the
back and tore his shirt off. Mrs.
John then came over and the police
threw Mrs. John against the car

And came at us (South) spraying
Mad. They did not have to spray
Hard stuff at us, and they
came at us with black jacks.

Maurice Hampton
QSC 21

Statement made by Mr. Ronnie Booker after witnessing the events of the evening of August 14, 1969 at the Bay Area Neighborhood Opportunity Center

When I looked out the window I saw a police officer running up the alley with a gun in his hand, and I saw Mr. Wilfred John run behind the officer and ask the officer for part the gun away, and Mr. John said he would tell the fellows back I then ran downstairs and told to Mr. John and the police officer in the alley and ~~said~~ the police officer said to Mr. John to clear the alley and said "this

is order", Mr. John told him
(the police officer) in certain words
that you cannot order me, but I will
take care of the situation and he
requested that the police officers
leave. The officer then pushed
Mr. John against the garage
door and had him (Mr. John) in
the arm with the handcuffs.
Then everyone started pushing
and shoving. I got the fellows
calmed down and Mr John told
the officers that if they left
that he would take care of
the situation and that everyone
home and he would come down
to the police station after

~~the~~ everything was in order.
Two police officers then jumped
Mr. John and pushed him against
the building and put the hand-
cuffs on him. The officer with
badge # 1167 then started
beating Mr. John on the face.

Edward Shiffey - I came downstairs
went to the alley they had Mr. John
and as they had a girl around back
the girl was saying he did not say
it he didn't say it, the policeman
said I heard the boy say a
vulgar curse word. Mr John
said he would take care of every-
thing and Bonnie Barker then
told the officer he was the assistant
the policeman then said get everyone
back inside and they told Mr. John
afterward you are under arrest and
they put one handcuff on him
and he said (Mr John) I am trying
to explain it to them and he
said would you rather see me
control everything and from that
they moved into the street and everything
started. They (Centie) started taking pictures
and the police didn't put the other cuff
on Mr. John when everyone was on
the side looking, they walked up to
him and said again you are under
arrest. And everyone broke back out
into the street and police

no picture could be taken of Mr. John being handcuffed. They were shooting made and they ~~[illegible]~~ shot my son within three feet and he had everyone going upstairs and they came up again and everything started up.

Statement made by Mr. Wilbur Banks.
Age: 19

One of the fellows said he went to the shopping center for cups for refreshments to be served at the center, because they ran out of cups, and two officers approched him and told him to tell Mr. John to clear the street. The officers came to the center to speak to Mr. John. The cop chased a kid, and Mr. John asked him to stop. Officer John down to the ground. Mr. John told them he could handle the whole ~~situation~~ thing. A officer grabbed a kid and started hitting him with a club and their hands. Then the police started spraying mace on young children, elderly people, and everyone around.

had been taken away.

On the the night of Aug. 14, my younger daughter Colleen Duffy, who had been attending a social night & talent show at the Bay Area OEO, came running into my home almost hysterical, to tell me that Mr Will John, director of the center, had been arrested & there was trouble there. I drove down immediately. The main street was filled with a police cars, red lights flashing, & across the street from the center there was a large crowd of white people watching. I was mostly intent at this point on reaching my other daughter Juanita, who works at the center, but it was my impression that at this time there was nobody

arriving apparently after Mr. John

directly in front of the building. ~~There~~ police there were a few policemen by the front door, most of the rest of them seemed to be across the street or behind police cars. There were 2 or three young men at the upstairs window, shouting at the police to leave, and I saw 2 bottles throw down. These were not thrown at anybody or anything, but into a large vacant area in the street. When I went into the front door there was pandemonium in the hall-way. Young girls and women were coming down the stairs screaming & crying hysterically, they were afraid to stay inside but seemed afraid to

go outside where the police were. One women told me she had seen a man who was trying to get his wife and children to his car hit with a club by a policeman. When I got upstairs things seemed relatively calm; ~~cos~~ people were calling to the young men to leave the front windows & they did. I saw Mr. Waide, & my daughter Juanita & her friend Leo Bagor. Her eyes were red & swollen & bloodshot, & she told me she had been sprayed with mace as she was trying to gather the children she was in charge of in front of the building & get them back inside. We went downstairs with the intention of looking for the younger

children & driving them home. By this time almost all the people were outside in the street; those who worked at the center were moving through the crowd telling everyone to cool it & go home. There was one angry looking red-faced policeman at the curb who the crowd seemed especially mad at, and a police oficial, who I think was a leitenant (sp.?), moved between him and the crowd, talking to them and obviously trying to get him to go back to his car. I must have moved through the crowd for at least 15 minutes, and at no time did I hear any profanity, but everywhere

the same remarks from the people: that if they, the police, hadn't come there would have been no trouble, and if they would leave there would be none. After we had checked all the children and seen that they had rides, I went back into the center and spoke with Mrs Waide, who had been washing ~~people~~ the eyes & faces of people who had been sprayed with mace. Shortly afterward 7 races _____ came in & told everyone to leave, that they were closing the center. Outside the police car lights were off, ~~and~~ many had left, and most of the crowd had ~~left~~ dispersed.

Barbara Duffy

☆ This policeman was the only one I saw who seemed at all cool and in control and acting with authority, or who made any attempt to talk reasonably with the people from the Center. At no time did I see any attempt to check the children who had been sprayed with mace, or see that they got medical attention.

Gertrude Howard

On Wednesday August 14, 1968 I attended the Social with my seven children. I was trying to gather my children together, to go home while the confusion was going on. The youth worker, Mrs. Kriete was holding the door closed to keep the people in the building at one point while I tryed to move out and go home. I saw the police push Mrs. John after the police hand-cuffed Mr. John. I felt there wasn't any need for the police at all. I saw the police use Mace on the children and the police had dogs in their cars that were on there way to the Center as I walked home with my children.

MRS. GERALD S. LEVINE
21 HEWITT BLVD.
CENTER MORICHES, N.Y., 11934

August 24, 1968

To Whom It May Concern:

I was present at part of the disturbance outside the BACAC Center on August 14th and feel that the use of MACE by the Suffolk County Police Dept. on such young children should be investigated. It should not be used on anyone, much less on a group that was not doing anything violent.

Jaynee S. Levine

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RACIAL EQUALITY inc.
164 MADISON AVENUE
NEW YORK, N.Y. 10016
(212) 532-8216

September 26, 1968

Honorable Ramsey Clark
Attorney General of the United States
Washington, D. C.

Honorable Sir:

Enclosed are the statements from persons involved in the Suffolk County mace incident which, regrettably, were not included in my letter to you of September 24, 1968.

I regret the inconvenience.

Sincerely,

L. Espeut

(Mrs.) L. Espeut
for
Carl Rachlin
Legal Director

/le
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EDUCATION AND
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RACIAL EQUALITY inc.
164 MADISON AVENUE
NEW YORK, N.Y. 10016
(212) 532-8216

September 26, 1968

Honorable J. Edgar Hoover
Director
Federal Bureau of Investigation
Washington, D. C.

Dear Mr. Hoover:

Enclosed are the statements from persons involved in the Suffolk County mace incident which, regrettably, were not included in my letter to you of September 24, 1968.

I regret the inconvenience.

Sincerely,

L. Espeut

(Mrs.) L. Espeut
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Carl Rachlin
Legal Director

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On the afternoon of Aug. 15th 1968 I was called down to Bayview Hospital in Mastic Beach by a Patrolman Collins to sign a permission form so that my daughter Juanita who had been sprayed with mace by police on the previous evening, could be given medical attention. When I arrived she and a group of boys were sitting in the lobby of the hospital. They were all nauseated & had severe headaches. She had already been given drops in her eyes, but the emergency room called & said to send her down again for further checking since she had almost fainted. We both went down-stairs, where a nurse & a doctor told me that

they wanted to take chest X rays and blood tests. When I asked why, the doctor answered "I don't know, Dr Frank ordered them". (Dr Frank Calabro) When I then asked to speak to him I was told that he was busy upstairs talking to people, and I couldn't see him. When I refused to have the tests done without speaking to him first, they tried to get me to sign a statement saying that I had refused treatment for Juanita, which I would not do. After a while, Dr. Calabro & a group of official looking men came down, passing us & going into the emergency room. Soon the nurse came up to me & asked what I had

decided; when I told her that Dr. Calabro had not spoken to me she seemed surprised and went into the emergency room, coming out in a few minutes and calling me in. Dr Calabro told me that he had called the manufacturer of the mace and been told that there was ~~were~~ no permanent damage done, & that the painful aftereffects should disappear in 24 to 72 hours. I asked him if it had been tested on children, & ~~she~~ he said yes, that as a matter of fact the manufacturer had tested it on his 15 month old son. He said that there could be an allergic-appearing reaction, & gave me a prescription for this contingency.

I wondered that the police could use a chemical on people that doctors themselves did not have information about.
During the whole period of about an hour that I was in the hospital, the young boys were being taken into the emergency room & given eye drops. When we left the hospital three of the boys were sitting on the front steps, their heads in their hands, still feeling extremely sick. Two of them needed to use a bathroom, but had been told that they were released & could not return & use the hospital restroom.

Barbara Duffy

On the night of august 14 we were having a taland show at the bay area Communit Center when I first came down stairs Mr John was talking to two policemen from what I could see everthing looked like it was under contral so I went back up stairs and was dancing about an hour later I came back down and everybody was in the alley and the policemen and all the people from the community Center was standing around Mr John and they had Mr John up against the garage and after that they started around to the front and thats when they put the hand cuffs on Mr John and was trying to put him in the car at the same time they were hitting him in his head with there fist and at the same time his wife Sylea was trying to help him when one of the policemen through her up against the car them after I saw one of the policemen spary the mace in Merlin Russel eyes

Lannay Burriss

404 Main Street
Center Moriches, N.Y.
August 16, 1968

On august 14, 1968 - I "Vernice Phifer" faced a realit
in center Moriches, New York that I had played down
since June 1, 1967. I hoped everyday that I wou
be proven wrong, that the situation wasn't as bad a
I thought it was.

Center Moriches is all white and scare
All the business men on main street are afraid
of what will happen to them if they show the
slightest favor to a black man. I had a busine
man to tell me he wouldn't dare show favor because
the politicians would destroy him. What happened at
our center Wednesday night is proof of the fear and
prejudice that exists in Center Moriches.

Mr. Mc John who is director of the community center
is "and has been very capiable of handling and disturbance
of keeping peace in and around the center since taking
the job.

The young folk admire and respect him very
much. The older people are pleased with his work and
the way he handles the children.

Wednesday night the [illegible]

and pushed him around for no reason what ever except to show they coued do it.

At one point I saw two policemen stand with gun in hand, painting at the people when they rushed out of the building to see what was happening to Mr. John.

I heard one policeman say order that crowd back inside, but when Mr. John turned to do so, two policemen forcefully pushed him up the street and into a police car.

Vernice Phifer

Eye Witness Report - Aug. 14

I left early from the talent ~~the talent show early~~ show with my boyfriend. As I ~~walked off from the~~ ~~left the~~ doorway of the center I saw one of two policemen standing at the entrance of the alley which ran beside the Community center I walked toward there to see what was ~~the~~ ~~is~~ happening and as I drew closer. I ~~could~~ heard the policemen asking the people who were coming ~~to see what had happened to~~ ~~please~~ move out of the way and leave. My boyfriend and ~~I~~ at the time there ~~the~~ were only a few people standing outside of the center. My boyfriend and I went back to his car ~~which~~ which was parked across the street from the center. ~~While~~ then we drove back behind the center to see what was happening but we could see nothing so we returned and parked again

across the street from the center.
We stayed in the car and from
the car I could see that now
the police were coming out of
the alley but they were taking
~~Wil~~ ~~Wil~~ Wil John with them.
There was a policeman on each
side of him each holding an
arm. The policemen were taking
him to the patrol car but ~~will~~
Wil John started across the street.
The cops really started the to
get excited and they groped
a hold of ~~him~~ Wil John very roughly
and asked where he was
going and he said that he
was going to go in his car and they
said that he couldn't. By
this time several more police
had arrived and a large
group of people had come
out of the center. A group
of people had followed the police
to the middle of the street
and they really grew angered
when Wil John was ~~[illegible]~~ handled roughly

I heard nothing after that. They returned to the sidewalk in front of the center. I saw nothing for a few moments because I turned to speak to my boyfriend. When I looked again it was ~~quite a~~ ~~the same~~ ~~pic of the p~~ most of the people had gone back into the center. I could see Wilfohn speaking to one of the policemen in front of the store next to the center. I heard him ask the policeman why he was being arrested but I could not hear the reply. At this ~~time~~ point I noticed about ~~8~~ 10 police cars. I turned again to speak to my boyfriend and when I looked ~~the~~ the two policemen had grabbed a hold of Wilfohn again and ~~took~~ taking him to the patrol car. He was now resisting and the police were being very rough with him. The people now started to pile out of the

community center. They were growing very angry because the police were arresting Wil John and also because they were ~~so rough~~ being unnecessarily rough with him. The crowd started surgeoning when ~~they~~ ~~the started to hand~~ ~~the~~ the police ~~start~~ appeared to be handcuffing Wil John. They then took him toward the patrol car. ~~The police pushed him~~ ~~two~~ police still holding on to ~~him~~ pushed him against Mrs. John ran and took hold of her husband's ~~elbow~~ arm the police pushed her away and one policeman ~~threw~~ threw her up against a car. While the other two policeman pushed Wil John against the back of the patrol car. It is when this happened that the crowd completely exploded. Bottles were thrown from the windows of the center and the people started

to scream and push. The police at that point started to get really brutal. I left then and went to my mothers house. had my boyfriend leave me at my mothers house. I told my mother and we returned to find my sister. When I returned there was about sixteen of police cars. more police cars arrived and there I now counted about 15 patrol cars. I was also told

Coleen Duffy

THE BAY AREA COMMUNITY ACTION COMMITTEE
"A FEDERALLY-FUNDED PROGRAM INVOLVING LOCAL VOLUNTEER SUPPORT IN THE 'WAR ON POVERTY'"
~~356~~ 404 MAIN STREET
CENTER MORICHES, NEW YORK, 11934

DIRECTOR
~~RUSSELL B. SCHULTZ~~

CHAIRMAN
PASTOR ALFRED HOFLER

Well there isn't too much to say, but I'll say what I saw and heard them say. Mr. John was in a crowd of people and cops trying to make them unaurstand what happen which started the whole thing. The two cops was holdin Mr. John and he broke a lose then they hand-cuffed him, he was also arrested. His wife Olivia was crying and talking to the cops for what they did to ~~there~~ her husbo

I went upstairs and listen to the music it happen again but I saw 2 cops holding Roxie Booker, he was also trying to talk to everyone. The cops was all standing around with spray in there hand ready to be used, the spray was mace, first used on Long Island by the ~~co~~ policemen. There were alot of children sprayed in the eye, people that is just as innocent as anything. Someone threw bottles from the side and two cops was ready to shoot everyone was throwing bottles + a bicycle. All parent came and got there children and when mine came I left headed for home.

Roxie Terry - 14

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CENTER MORICHES, N. Y.
TEL. 878-0067

SHIRLEY-MASTICS CENTER
120 MASTIC ROAD
MASTIC BEACH, N. Y.
TEL. 281-3322

A Dow Mr. John's wife being pushed against the car by a policemen, I saw policemen using the mace like it was a toy, squirting it in everyone's eyes that move, I saw three policemen ~~grap~~ grab Louis Carroll and rough him up and arrest him.

Curtis Moore
17

THE BAY AREA COMMUNITY ACTION COMMITTEE

"A FEDERALLY-FUNDED PROGRAM INVOLVING LOCAL VOLUNTEER SUPPORT IN THE 'WAR ON POVERTY'"

404 MAIN STREET
CENTER MORICHES, NEW YORK, 11934

DIRECTOR
WILFRED JOHN

CHAIRMAN
CHARLES H. WAIDE

EYE WITNESS REPORT-AUGUST 14th

I left early from the Talent Show with my boyfriend. AsI walked out of the Center I saw one or two policemen standing at the entrance of the alley which ran beside the Community Center. I walked towa d them to see what was happening, and as I drew closer, I could hear the policemen asking,the people who were coming to move out of the way and leave. At the time there were only a few people outside of the Center. My boyfriend and I went back to his car which was parked across the street from the Center. He then drovw back behind the Center to see what was happening but we could see nothing so we returned and parked again across the street from the Center. We stayed in the car and from the car I could see that now the policemen were coming out of the alley, but they were taking Wil John with them. There was policemen on each side of him, each holding an arm. The policemen were taking him to the patrol car,but Wil John started across the street. Thecops really started to get excited and they grabbed a hold of Wil John very roughly.

To the Parents

On the night of Wed. 8/14 in C.M., L.I. the chemical mace was used unnecessarily by our law enforcement Agency, The Suffolk Police Dept. This chemical mace was sprayed in the faces of babies, youth and adults. This incident that brought on or gave the Police the courage to use it was not a Riot but a feeling of concern for the direction of the B.A.C.A.C.

THE BAY AREA COMMUNITY ACTION COMMITTEE
"A FEDERALLY-FUNDED PROGRAM INVOLVING LOCAL VOLUNTEER SUPPORT IN THE 'WAR ON POVERTY'"
~~356~~ 384 MAIN STREET
CENTER MORICHES, NEW YORK, 11934

DIRECTOR
~~RUSSELL G. SCHULTZ~~

CHAIRMAN
~~PASTOR ALFRED HOFLER~~

I was upstairs at the time when all the policemen started to come. The people were pushing and shoving to get outside I was getting attacked trying to keep the people inside so there wouldn't be so many on the street. I was gathering children together so they wouldn't get caught in the mess on the street. When I finally went onto the street, People were running all over the place. I saw policemen holding Mr. John. There were people throwing bottles and there were people taking pictures of what the police were doing to the people. When the police sprayed the Mace all the people moved away from the policemen.

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~~860~~ 409 MAIN STREET
CENTER MORICHES, NEW YORK, 11934

DIRECTOR
~~RUSSELL S. SCHULTZ~~

CHAIRMAN
~~PASTOR ALFRED HOFLER~~

There were people screaming and shouting I saw people covering their eyes from the mace and because they had gotten it in their eyes. Everyone was running in different directions. Some mothers were calling for there children and there were children in the crowd who were screaming for their parents, sisters, and brothers.

All the people were pushing and shoving to get away from the area. Some policemen might stop them if they saw the people leavi Everyone wanted to leave the area

Lynette Lindgren - 15

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August 15, 1948

I attended Social & Talent Show at the Bay Area Neighborhood Center with my three teenage Children and two teenagers from Patchogue Avenue, Inastia. Shortly after Arriving I was summoned to the phone and asked to pick up Mrs. Liscelli, one of our Senior Citizens - upon returning to the Center I parked on the Corner of Canal Street at Main. We were enjoying the the entertainment upstairs. During an interval I decided to go down for a breath of air as it was extremely warm with the large Crowd upstairs. I was standing by the front window when the police car pulled up. Things seem to quiet down for a few minutes and then it flared up again and more police Cars arrived. The people started pouring down from upstairs.

I tried for some time to help Mrs. John to send them back up-stairs and the band began to play again. More police arrived and a Crowd began to gather from the outside. When the people began to pour out again I decided it was useless and I should take my handicapped son and the others home. I asked Mr. Wade if there wasn't some way to get the Children and women out of the center by the back door. I sent my daughter out with Mrs. Liscelli thru the back door and around the parking lot to the car to avoid the Crowds before going up-stairs for the others. I had difficulty get out of the Area because of the police Cars that line both blocks on main Street, and more were arriving as I left.

Lillian Donahue

Betty Kriete

On August 14. Wednesday I was at the Center Yorick B.a.c.a. opportunity center. For a social evening and talent show. I was talking to Mrs Lenine and Mr. Wade on the first floor level. Approximately 9:30 or 9:45. I noticed a small disturbance out side a small crowd and one police car. seconds later the youth and young people came running down the stairs I went to the door to try and prevent the egress and to protect the younger children from getting hurt. Quite a few went out on the side walk. Then Mr John tried to get most of them inside and there was very few people on the side walk I ~~the police and~~ Mrs John and the police were talking out on the side walk I heard something about Mr. John being arrested the people on the stairs heard it also

They started back down I saw one youngster start to fall grabbed him by the T Shirt and held him up so he wouldn't be trampled. some of the teenagers were being taking motion pictures & still pictures. The cameras had been loaded to take pictures of the talent show. At this time there were about 10 police cars when I left to take a teenager home there were about 12 police cars and there was broken glass in the road

James Seymour

Monday, August 19, James Seymore came to the Bay Area Community Center complaining of chest pains, congested throat and difficulty in swallowing and difficulty in swallowing

Mr. Wil John advised his Youth Coordinator to take Seymo to the Bayview Commun. Hosp as James had been exposed to the chemical mace during the Wednesday night Disturbance

At 12:45 a battery of tests were Run on Mr. S. which included pulse, temperature, eye, auditory and esophagea

test proved negative
and Mr. S. was
released at 3:45.

August 19 1965

Donnial Burriss

on Monday August 19, Donnial Burriss went to the Bayview hospital for his eyes test were taking and Ex ray's were given and he was released.

August 19-1968

On Monday august 19 Ronnie Rocker went to the Bayview hospital with pains of the left shoulder I was checked and Ex ray's were taken and I was released.

On Wednesday, August 14, 1968 I attended the Bay Area Social with my four youngest children. We arrived about 8 o'clock. The youth were giving a talent show, similar to the one I attended last month. While refreshments were being served and music was still playing - I noticed my 10 yrs. old daughter Audrey wasn't in the room. I went downstairs to the main floor. I saw her out side with other children - I began talking to people on the main floor - I motioned to her not to move away from the building - I noticed a police car outside the building. Someone came inside the building to call Mr. John to go outside. Mr. John went out side. The people at the Center started to notice what was going on. I went back up the stairs to my younger children and made them sit on chairs in the middle of the room. Confusion seemed to be all over. The kids that were playing the instruments started to wrap them up and were afraid they would be broken. Audrey came upstairs and said Mr. John was pushed against the wall by the policeman. I made her sit down too. People started to gather their children and leave the building. I was afraid to move out of the building - Audrey said the police had guns. I felt I couldn't manage my children to get to the car, which was in the back parking lot. While they sat in the chairs - Ronnie Booker the Youth Workers ame upstairs and said the police took Mr. John away and as soon as everyone went home he would go to Patchogue too. He offered to help me to the car. A young girl to one child, Ronnie had one and I had one - Audrey walked close by. When we got to the car the young girl took off - we heard what sounded like shots- Ronnie was asking for the home phone number in case he had to call from Patchogue Station. I yelled for the children to lay on the bottom of the car - a police man came into the parking lot from out of the alley - ran up to Ronnie Booker - pushed him against

my car - I yelled from the car - The policeman held his nightstick way up over his head - as if he was about to hit Ronnie - when I yelled - The policeman said, Listen lady I don't get paid to have people throw bottles at me! - Ronnie was trying to reason with the policeman - the children and I were yelling - then the police ran on. I went home, tryed to call Patrolman Collins (there wasn't any answer) and after putting children to bed went on ~~the~~ to Patchogue Police Station with Mr. Seymour.

Corrine Seymour
117 Wood Ave
Mastic N.Y. 11950

THE BAY AREA COMMUNITY ACTION COMMITTEE

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CHAIRMAN
CHARLES H. WAIDE

I first heard of the disturbance outside of the Center when I was upstairs taking care of refreshments for people who attended the Social Night. I immediately came downstairs to find out exactly what had taken place. When I got outside, I saw Wil John surrounded by officers and people from the Center. The police apparently were attempting to bring Wil to a police car, and it was only later that I learned he had been put under arrest. As they proceeded towards the police car which was situated across the street, the crowd(perhaps 15 people), followed, partly in anger and partly in bewilderment. My first reaction was to clear the area of people and to get the people upstairs before serious trouble started. I saw Wil hold up his hands in the air and ask the police to stop shoving him around. Then the police apparently changed their minds and turned back to the Center. Wil was telling everybody to go back inside, and practically everybody had complied with HIS request when the police told him that he was once again under arrest. We clearly understood that he had been only used by the police and as they once again led Wil away, the crowd surged forth in an attempt to keep him with us. I heard Wil ask what he was under arrest for and I heard a cop reply "I don't have to tell you anything". The police were obnoxious and entirely too rough with Wil. It was when the police insisted on arresting him that the crowd became really angry and, as they led Wil away, the melee begam. I saw a bicycle thrown and several bottles were broken. Sylvia John was mishandled by the cops as she attempted to go to the aid of her husband, and several older boys who were close to Wil told me they would not let them take him away. They surged towards the police in anger. I had been trying constantly throughout the incident to get everybody inside the building because I was afraid the cops would start shooting and there were so many innocent kids that could have been hurt. As I hurried little kids upstairs and tried to get some of the older people up,the police released the Mace.I turned around to see a cop with a small black canister spraying the stuff right next to me. It didn't register in my mind what it was until I felt my eyes burning and I became weak. I was horrified, shocked and throughly scared. I continued to try and make people return to the building but everyone was too confused. I had to hold several kids back from what I feared was literally suicide. I ran upstairs trying to get people to sit down, get their heads out of the windows, and stop throwing bottles. It was impossible because everybody was too frightened. People were crying hysterically. I asked people to go home but I was crying myself out of outrage for Wil and my people.I went outside again instucting kids to leave right away. I helped a young boy across the street and was asked by an officer what I was doing. I replied that I wanted him to go home and the officer gave me a dirty look but said nothing more.

It was at that point that people started leaving for the 5th precinct in Patchogue. I intended to go, but I wanted to be sure that everyone had a ride home. I gave the Magee boys a ride to the precinct

THE BAY AREA COMMUNITY ACTION COMMITTEE
"A FEDERALLY-FUNDED PROGRAM INVOLVING LOCAL VOLUNTEER SUPPORT IN THE 'WAR ON POVERTY'"
404 MAIN STREET
CENTER MORICHES, NEW YORK, 11934

DIRECTOR
WILFRED JOHN

CHAIRMAN
CHARLES H. WAIDE

after we had stopped at my house to have some cold drinks. When we arrived at the precinct a crowd was there already and more people continued to come as the night grew on. We were continually asked to either be quiet or leave, and I had made up my mind (along with all of the people there) that I would not leave until Wil was released. Ronnie Booker asked me to go back to the Center and get the movie camera that he had used to take pictures of Wil's arrest and the force used by the police. We were afraid it might be stolen. I did so, with Leo Regan and Fran Watkins, and returned to the precinct with the camera. At this time I was asked to make a statement by Mr. Waide for the Board. I was also interviewed by several reporters. The rest of the time was spent waiting for Wil. At about 2:20, Wil was released, and after having made arrangements for bringing all the kids who had been sprayed with Mace to the doctor the next day, I left with Leo, Silas, and Curtis Magee. I gave them rides home and finally reached my house at 3:30.

Juanita Duffy

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I was taken to Bayview Hospital on August 15th along with nine others;Donnial Burriss, Beverly Venerable, John Cox, Jesse Cox, Terry Hughley, Tammy Hughley, Joe Henderson, Robert Badgett, and Billy Williams. We were taken there by Mrs. Frances Watkins and Mrs. Coreen Seymour. We got there at approximately 12:45 and did not leave until 3:30. When we arrived we went to the lobby where we waited until the emergency room could take us. We were asked if we could sit outside of the building by the receptionist, and Fran told her that many of us felt to weak to stand up. We were later asked to stop running in and out of the bathroom(some of us had gone to the bathroom one by one). All of us were feeling progressively worse as we were made to sit there for hours,

After we hadbeen there for about an hour, a small girl came in with some bee stings and a hysterical mother. She received treatment long before any of us did. We were told that we needed our parents consent to be examined. I was slightly confused later on when an officer questioned me and told me that parent's consent was not needed for just an examination. By this time I had become quite ill and very faint. Mrs. Watkins said later that I had fainted although I don't remember too much of what went on withih that time period. I had attempted several times to contact both my mother and my father but was not able to do so.

When I finally became so ill that Mrs. Watkins was scared she demamded that the doctors see me immediately and I was taken to the examination room. There were two doctors there.They took my blood pressure, listened to my heart, and finally got around to examining my eyes. Apparently it was quite funny because both were laughing at something. Then Dr. Frank Calabro came in, I might add he was angry for somebody calling him in on his day off for what he appaently thought was quite trivial. They all laughed at something. When I told them I thought that it was a disgusting drug to use on people, especially young children, Calabro asked me how old I was. I told him I was 18 and he chuckled and said, "You're not a kid," .

They told me they could find nothing wrong with me, gave me some eye drops.(they did not give everyone eye drops nor did they take everyone's temperature, Blood pressure,etc.) Later I was asked to submit to further tests but I told the doctor that they had felt I was fine just a little while ago and I couldn't understand why they felt it was necessary now.I told him I preferred to go to my own private physician and I also added that I did not care for the treatment or the way I was treated there.

I came downstairs and was waiting for my mother to come down when a man told me to leave the building because I had been released. I told him my mother would be down in a minute and asked if I could sit down (I still felt sort of shakey) He told me to wait outside. Others who asked if they could use the toilet facilities were told that they had already been released and that they could not use them.

Juanita Duffy

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9/1

Marc incident

— letter by Human Rel. Comm → request to SEPBRE

& repres. of FBI in Deerpark — registered letter

— letter & telegram to Ramsey Clark

— then 2nd telegram to Clark requesting answer

written statement - unsigned

{ FBI - statement
Justice Dept. }

Package into
typed statements & spice
Saturday
Tuesday 2 weeks.

typed statement -
copies of statement

Mr Yaffy Frizz

Mrs Sylvia John
called by State Human Res
Jim Lacey - Nassau Co branch
submitted complaint to Suffolk
Co Human Rel.

Suffolk → Nassau Co.
= no investigation
= deny complaint

Jim Lacey - offered
atty assistance in
drawing complaint but
has no jurisdiction

516-538-1360 -

516 924-620-2380 Sylvia John

handwritten - you look me

Copy of handwriting

Name
Address
Telephone
Name of child
age of child

~~State the~~ My child and I were at the center for the purpose of:

At the time my child was sprayed with MACE he (she) was standing [_____ (on side walk, doorway of center etc.)] about [_____ feet (how far) from the police officer who sprayed him (her)]

At the time my child was sprayed with MACE he (she) was (or was not) threatening the police officer ~~He (she) w~~ in any way. He (she) was (or was not) making any threatening remarks or gestures to the police officer. He (she) was was _____ (walking out of the center, on the way home, simply ~~attracting~~ watching what was happening etc.) when he (she) was sprayed.

As a result of ~~being spray with MACE~~ the improper spraying of my child with MACE he (she) has suffered _____ (describe symptoms and their ~~dur~~ duration)

Proposed q. concern Suffolk County Mace Incident.

NAME OF CHILD or NAME OF ADULT.
AGE OF CHILD.

NAME OF PARENT
ADDRESS.

DATE OF INCIDENT
PEOPLE ~~#~~ PRESENT (NAMES & ADDRESS) who saw the incident.

WAS ~~PERSON~~ ADULT OR CHILD ARRESTED:
What was CHARGE:
Has a DATE for ~~OF~~ TRIAL been set

NATURE OF INJURIES to child or adult
WAS MEDICAL TREATMENT REQUIRED
Was HOSPITAL req.? — Name length of stay

Were you advised that you might need medical treatment after being sprayed by the MACE if so, by whom?

Name & ADDRESSES OF DOCTORS WHO SAW OR TREATED ~~#~~ INJURIES
— DATES OF TREATMENT.
—

~~Describe~~ ① What were u & y child doing immed. before the incident tk place? ② Were were u or ch. going at the time " " " ? ③ Exactly where did the i. tk pl?
④ Did u obs. how m. pol. were present
⑤ " " or ch. see who ~~Tkd~~ sprayed the mace?
⑥ Did u have Name or officer (s) " " " ?
or badge #.

Names of any oth. off. present
(rank + # if poss.).?
badge.

Sep. questions | Descr. detail. exactly what hap. + what U & ch. were doing
as the man was sp'd. Also state ch, the pol. said anyth before sp.
the man, + what?

Were any civ. public officials pres?
(give names if poss).

What else did pol, do in addn to sp man?
Any bad language. - or racial names?
If yes, please give name of pol., if poss.

To the interviewers who will obtain info for annexed ques, please try to get info as poss., more rather than less. We can always strike somethg if unimp. Q. sh. help get info; you will have to ask additional questions of dif people - in o. to get a full set of answ. Imp. to use judgement to obtain as much info as poss.

P [illegible] - THOMAS, HENRY J. et al V. STATE OF MISSISSIPPI - CASE, 1963

Folder 32

Please Retain Original Order

IN THE

Supreme Court of the United States

October Term, 1963

No. .....

HENRY J. THOMAS, JAMES FARMER, JOHN LEE COPELAND, ERNEST PATTON, JR., GRADY H. DONALD, PETER ACKERBERG, JAMES LUTHER BEVEL, PAULINE EDYTHE KNIGHT, CHARLES DAVID MYERS, CAROLYN YVONNE REED, JOSEPH JOHN MCDONALD, RAYMOND RANDOLPH, JR., ALEXANDER ANDERSON, LESTER G. MCKINNIE, WILLIAM E. HARBOUR, ZEV AELONY, MARVIN ALLEN DAVIDOV, CLAIRE O'CONNOR, DAVID KERR MORTON, KATHERINE A. PLEUNE, ROBERT FILNER, ELIZABETH S. ADLER, SANDRA NIXON, TERRY SUSAN PERLMAN, EDWARD J. BROMBERG, LESTRA ALENE PETERSON, THOMAS VAN ROLAND, JOAN FRANCES PLEUNE and GRANT HARLAN MUSE, JR.,

Petitioners,

—v.—

STATE OF MISSISSIPPI.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

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In the

Supreme Court of the United States

October Term, 1963

No. .....

Henry J. Thomas, James Farmer, John Lee Copeland, Ernest Patton, Jr., Grady H. Donald, Peter Ackerberg, James Luther Bevel, Pauline Edythe Knight, Charles David Myers, Carolyn Yvonne Reed, Joseph John McDonald, Raymond Randolph, Jr., Alexander Anderson, Lester G. McKinnie, William E. Harbour, Zev Aelony, Marvin Allen Davidov, Claire O'Connor, David Kerr Morton, Katherine A. Pleune, Robert Filner, Elizabeth S. Adler, Sandra Nixon, Terry Susan Perlman, Edward J. Bromberg, Lestra Alene Peterson, Thomas Van Roland, Joan Frances Pleune and Grant Harlan Muse, Jr.,

Petitioners,

—v.—

State of Mississippi.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

Petitioners pray that a writ of certiorari issue to review the judgments of the Mississippi Supreme Court entered in the above-entitled cases as set forth in "Jurisdiction," *infra.*

Opinions Below

The opinions of the Mississippi Supreme Court are reported as follows: *Thomas* v. *State,* 160 So. 2d 657 (App. p. 1a); *Farmer* v. *State,* 161 So. 2d 159 (App. p. 36a); *Knight* v. *State,* 161 So. 2d 521 (App. p. 40a). The remain-

ing cases were decided by brief opinions affirming on the authority of the *Farmer* and *Thomas* cases. Their citations are set forth in the footnote below.[1]

Jurisdiction

The judgment of the Mississippi Supreme Court in *Thomas* v. *State,* No. 42,987, was entered on February 17, 1964. Judgments in *Farmer* v. *State,* No. 42,983; *Bevel* v. *State,* No. 42,960; *Aelony* v. *State,* No. 42,980; *Davidov* v. *State,* No. 42,723; *McDonald* v. *State,* No. 42,970; *Van Roland* v. *State,* No. 43,029; *Myers* v. *State,* No. 42,968; *Peterson* v. *State,* No. 43,034; *Patton* v. *State,* No. 42,956; *Katherine Pleune* v. *State,* No. 42,957; *Copeland* v. *State,* No. 42,722; *Muse* v. *State,* No. 42,975; *O'Connor* v. *State,* No. 42,982; *Joan Pleune* v. *State,* No. 43,036; *Donald* v. *State,* No. 42,951; *Nixon* v. *State,* No. 42,966; *Filner* v. *State,* No. 42,978; *Anderson* v. *State,* No. 42,985; *Perlman* v. *State,* No. 42,961; *Harbour* v. *State,* No. 42,963; *Ackerberg* v. *State,* No. 42,984; *Reed* v. *State,* No. 43,031; *Randolph* v. *State,* No. 43,032; and *Morton* v. *State,* No. 42,973, were entered on March 2, 1964, and in *Knight* v. *State,* No. 42,958; *Bromberg* v. *State,* No. 42,967; *McKinnie* v. *State,* No. 42,971; and *Adler* v. *State,* No. 42,999, on March 9, 1964.

Suggestions of error were overruled in *Thomas,* on March 16, 1964; in *Farmer, Knight, Patton, McDonald, Bromberg, Filner, Aelony, Nixon, Myers, Donald, Ackerberg, Harbour, Perlman, Reed, Morton, Anderson, Copeland, Muse, O'Connor, Van Roland, Adler, McKinnie, K.*

---

[1] *Copeland* and *Davidov,* 161 So. 2d 161; *Donald, Patton,* and *K. Pleune,* 161 So. 2d 162; *Bevel, Perlman,* and *Harbour,* 161 So. 2d 163; *Nixon, Myers,* and *McDonald,* 161 So. 2d 164; *Morton, Muse, Filner,* 161 So. 2d 165; *Aelony, O'Connor, Anderson,* 161 So. 2d 166; *Ackerberg, Roland, Reed,* 161 So. 2d 167; *Randolph, Peterson, J. Pleune,* 161 So. 2d 168; *McKinnie,* 161 So. 2d 520; *Bromberg* and *Adler,* 161 So. 2d 528. (See App. pp. 58a *et seq.*)

Pleune, Davidov, Bevel, Randolph, and *Peterson,* on April 6, 1964; and in *J. Pleune* on April 13, 1964.

Jurisdiction of this Court is invoked pursuant to Title 28, U. S. C., §1257(3), petitioners having alleged below, and alleging here, deprivation of rights, privileges and immunities secured by the Constitution of the United States.[2]

Questions Presented

Whether the arrest, prosecution and conviction of petitioners, Negro and white interstate passengers, deprived them of rights protected by:

1. the due process clause of the Fourteenth Amendment in that the records are devoid of any evidence of guilt;

2. the due process clause of the Fourteenth Amendment in that the statute under which they were convicted is so vague and indefinite as to afford no ascertainable standard of guilt and fails to warn of the conduct punishable;

3. the due process and equal protection clauses of the Fourteenth Amendment in that their arrests, prosecutions and convictions were designed to enforce racial segregation required by state statutes and by ordinance of the City of Jackson in interstate facilities;

4. the First and Fourteenth Amendments to the United States Constitution in that petitioners were exercising rights of free expression and assembly in peacefully protesting racial segregation in interstate facilities;

5. Title 49, United States Code, §§3(1) and 316(d), prohibiting racial discrimination in interstate bus and train facilities;

---

[2] A common writ of certiorari is filed pursuant to Rule 23(5) of the Rules of this Court.

6. Article 1, Section 8, clause 3 of the United States Constitution (the Commerce Clause) in that the prosecution of petitioners constituted an unlawful burden on commerce.

Statutory and Constitutional Provisions Involved

These cases involve Section 1 of the Fourteenth Amendment to the United States Constitution and Article 1, Section 8, Clause 3 (Commerce Clause) of the United States Constitution.

Each petitioner was convicted under Title 11, Code of Mississippi, Annotated, Section 2087.5 (1942 as amended):

> §2087.5. *Disorderly conduct—may constitute felony, when.*
>
> 1. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:
>
> (1) crowds or congregates with others in or upon shore protecting structure or structures, or a public street or public highway, or upon a public sidewalk, or any other public place, or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered

so to do by any law enforcement officer of any municipality, or county, in which such act or acts are committed, or by any law enforcement officer of the State of Mississippi, or any other authorized person, or

(2) insults or makes rude or obscene remarks or gestures, or uses profane language, or physical acts, or indecent proposals to or toward another or others, or disturbs or obstructs or interferes with another or others, or

(3) while in or on any public bus, taxicab, or other vehicle engaged in transporting members of the public for a fare or charge, causes a disturbance or does or says, respectively, any of the matters or things mentioned in subsection (2) supra, to, toward, or in the presence of any other passenger on said vehicle, or any person outside of said vehicle or in the process of boarding or departing from said vehicle, or any employee engaged in and about the operation of such vehicle, or

(4) refusing to leave the premises of another when requested so to do by any owner, lessee, or any employee thereof,

shall be guilty of disorderly conduct, which is made a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars ($200.00), or imprisonment in the county jail for not more than four (4) months, or by both such fine and imprisonment; and if any person shall be guilty of disorderly conduct as defined herein and such conduct shall lead to a breach of the peace or incite a riot in any of the places herein named, and as a result of

> said breach of the peace or riot another person or persons shall be maimed, killed or injured, then the person guilty of such disorderly conduct as defined herein shall be guilty of a felony, and upon conviction such person shall be imprisoned in the Penitentiary not longer than ten (10) years.

Each case involves Title 49, United States Code, Section 316(d):

> . . . It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, region, district, territory, or description of traffic, in any respect whatsoever; or to subject any particular person, port, gateway, locality, region, district, territory, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever. . . .

Each case also involves Sections 2351, 2351.5, 2351.7, 7784, 7785, 7786, 7786.01, 7787, 7787.5 of the Code of Mississippi, 1942 and ordinance of the City of Jackson, Mississippi, adopted January 12, 1956, and recorded in Minute Book "FF," page 149. These state statutes and Ordinance of the City of Jackson are appended, *infra* pp. 46a-57a.

Statement

These are twenty-nine of more than three hundred "Freedom Rider" cases tried in Jackson, Mississippi.[3] The arrests, involving common facts relevant to the constitutional issues, occurred in 1961 in bus and train terminals in the City of Jackson.[4] Each petitioner was tried separately though common facts and identical federal constitutional and state law issues were involved. All were charged with the same offense and received identical sentences.[5] The

---

[3] There are twenty-nine separate records and trial transcripts. However, the principal record is *Thomas* v. *State,* No. 42,987. The testimony and witnesses are essentially the same in all cases.

[4] Arrested at Trailways Continental Bus Terminal were: Henry J. Thomas, No. 42,987 (R. 4); James L. Farmer, No. 42,983 (R. 4); John Lee Copeland, No. 42,722 (R. 3); Ernest Patton, Jr., No. 42,956 (R. 4); Peter Ackerberg, No. 42,984 (R. 4); James Luther Bevel, No. 42,960 (R. 4); Grady Donald, No. 42,951 (R. 4); and Alexander Anderson, No. 42,985 (R. 4) (May 24, 1961). Pauline Edythe Knight, No. 42,958 (R. 4) and Charles David Myers, No. 42,968 (R. 4) (May 28, 1961); Carolyn Yvonne Reed, No. 43,031 (R. 4) and John J. McDonald, No. 42,970 (R. 4) (June 2, 1961). Raymond Randolph, Jr., No. 43,032 (R. 4) (June 7, 1961).

The following were arrested at Greyhound Bus Terminal: Lester G. McKinnie, No. 42,971 (R. 4); William Harbour, No. 42,963 (R. 3) (May 28, 1961). Katherine A. Pleune (June 10, 1961) (No. 42,957). Zev Aelony, No. 42,980 (R. 4); Marvin Allen Davidov, No. 42,723 (R. 4); Claire O'Connor, No. 42,982 (R. 4); David Kerr Morton, No. 42,973 (R. 4) (June 11, 1961). Robert Filner, No. 42,978 (R. 4) and Elizabeth S. Adler, No. 42,999 (R. 4) (June 16, 1961).

The following were arrested at Illinois Central Train Terminal: Sandra Nixon, No. 42,966 (R. 4) (May 30, 1961); Terry Susan Perlman, No. 42,961 (R. 4) (June 8, 1961). Edward Bromberg, No. 42,967 (R. 4); Lestra Peterson, No. 42,034 (R. 4); Thomas Van Roland, No. 43,029 (R. 4); Joan Frances Pleune, No. 43,036 (R. 4); and Grant Harlan Muse, No. 42,975 (R. 4) (June 20, 1961).

[5] In Municipal Court each petitioner received 60 days suspended sentence and $200.00 fine. In trials *de novo* in the County Court of Hinds County they were sentenced to four months in jail and $200.00 fine, the maximum provided by statute.

same state law and federal constitutional questions were raised in each case after trials in the Municipal and County Courts of the City of Jackson,[6] and on appeal to the Circuit and Supreme Courts of Mississippi. See *infra,* pp. 26-31.

Three affirming opinions were written for all twenty-nine cases by the Mississippi Supreme Court: *Thomas* v. *State,* No. 42,987; *Farmer* v. *State,* No. 42,983; and *Knight* v. *State,* No. 42,958. See *infra,* pp. 1a-45a. All others were affirmed without opinion, merely citing *Thomas* and *Farmer.* See *infra,* p. 58a. Therefore, for convenient presentation, the issues are brought here by petition for writ of certiorari in a single document. Supreme Court Rule 23(5), cf. Petition for Writ of Certiorari, *Gober, et al.* v. *City of Birmingham,* 373 U. S. 374.

Petitioners, white and Negro interstate passengers, were tried and convicted in the Municipal Court of Jackson under affidavits charging them with breach of the peace under Section 2087.5, Miss. Code Annot., 1942 as amended, in that they did "wilfully and unlawfully congregate with others" in "a place of business engaged in selling members of the public" and failed or refused "to move on when ordered" by a law-enforcement officer.[7] Upon conviction they were sentenced to four months in jail and $200.00 fine, which convictions were affirmed on appeal to the County, Circuit, and Supreme Courts of Mississippi.

For purposes of clarity, a resume of the facts in common in all twenty-nine cases is presented first. Events are then

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[6] The sentencing portion of each of the 29 records is identical. Record citations are indicated by name of defendant and page.

[7] (R. Ackerberg 4, Adler 4, Aelony 4, Anderson 4, Bevel 4, Bromberg 4, Copeland 3, Davidov 4, Donald 4, Farmer 4, Filner 4, Harbour 3, Knight 4, McDonald 4, McKinnie 4, Morton 4, Muse 4, Myers 4, Nixon 4, O'Connor 4, Patton 4, Perlman 4, Peterson 4, J. Pleune 4, K. Pleune 3, Randolph 4, Reed 4, Thomas 4, Van Roland 4.)

described sequentially and by place of arrest as follows: Trailways Continental Bus Station, Greyhound Bus Terminal and Illinois Central Railroad Station. Thereafter follows a detailed exposition of the facts of all the cases annotated by record citations.

Facts in Common[8]

Almost identical circumstances surrounded the arrests of these twenty-nine petitioners. All were interstate passengers protesting racial segregation in interstate bus and train facilities. All were in racially mixed groups and all were arrested by police immediately upon arrival in the City of Jackson.

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[8] In the spring and summer of 1961, more than three hundred "Freedom Riders," including these twenty-nine petitioners attempted to use travel facilities on an unsegregated basis in Jackson, Mississippi. They were arrested, jailed and later charged with violating Mississippi disorderly conduct—breach of the peace statutes. (Title 11, §§2087.5 and 2089.5.)

Though the facts and charges were almost identical, the State of Mississippi required a separate trial for each of the more than three hundred persons arrested, including these twenty-nine petitioners. Trials were conducted at the rate of two per day over a period of months. All were convicted. All were initially fined two to five hundred dollars ($200.00-$500.00) and given sentences ranging from sixty days suspended to four months in jail, not suspended. Practically all sought trials *de novo* in the County Court and posted bonds in the amount of five hundred dollars ($500.00) each to assure appearance. Two persons dismissed their County Court appeals and served out their fines and sentences. Fifty-four persons entered pleas of *nolo contendere,* paid fines and costs and accepted suspended jail sentences. The rest pleaded not guilty, had their convictions affirmed and sentences increased to a fine of five hundred dollars ($500.00) and four months in jail. Those appealing to the Circuit Court from County Court convictions were required to post additional cash bonds of one thousand dollars ($1,000.00) each, bringing bond to one thousand, five hundred dollars ($1,500.00) per person. Indeed, bond costs alone exceeds three hundred seventy-two thousand dollars ($372,000.00). Travel costs, counsel fees and other expenses have further increased the financial burden.

An additional fourteen thousand dollars ($14,000.00) was paid to the Clerk of the Mississippi Supreme Court as security for prepara-

Captain of Police Ray testified in each case that he had advance notice that petitioners were coming to Jackson to "create an incident." He had numerous police officers on the scene for the purpose of arresting them and a patrol wagon parked outside to carry petitioners off to jail. In each case, he alleged that "ugly" crowds met petitioners, though prosecution witnesses as well as petitioners contradicted Ray's testimony. In no case did Captain Ray arrest anyone in the crowd "threatening" petitioners.

In no instance did Captain Ray inquire of petitioners whether they had reason to be in the station. No allegation was made that any of the petitioners committed any act of violence or was anything but peaceful. The only evidence of guilt is their mere "presence" in the bus and train terminals in racially mixed groups. In each case, immediately upon arrival they were ordered to "move on and move out of the terminal" and upon refusal, were arrested.

State statutes as well as an ordinance of the City of Jackson required segregation in interstate bus and train facilities (App. pp. 47a-57a). At all places of arrest there were separate waiting rooms for Negro and white persons designated by "white" and "colored" signs "By Order of Police."

Hereafter follows the detailed facts upon which the above summary is based.

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tion of the twenty-nine records for this petition for certiorari. This security, like all appearance and appeal bonds posted in these cases, was in the form of cash as no surety bonds can be obtained by civil rights demonstrators in Mississippi. See Memorandum of United States as *Amicus Curiae*, pp. 2-4, on Motion for a Stay of Injunction Pending Appeal, *Bailey* v. *Patterson*, 368 U. S. 346.

Collateral proceedings arising out of these incidents are reported as follows: *Bailey* v. *Patterson*, 199 F. Supp. 595 (S. D. Miss. 1961), vac. 369 U. S. 31; on remand 206 F. Supp. 67 (S. D. Miss. 1962); aff'd in part and rev'd in part, 323 F. 2d 201 (5th Cir. 1963). See also *U. S.* v. *City of Jackson*, 318 F. 2d 1 (5th Cir. 1963).

A. *Trailways Continental Bus Station:*

1. May 24, 1961:

Petitioners Thomas, Farmer, Copeland, Patton, Donald, Ackerberg, Anderson and Bevel[9] boarded Trailways buses in Montgomery, Alabama for Jackson, Mississippi on May 24, 1961[10] (R. Thomas 562-63). The buses arrived in Jackson under heavy police escort (R. Thomas 406).[11] After

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[9] Petitioners Bevel's and Anderson's bus arrived in Jackson at 2:00 p. m. (R. Bevel 18; Anderson 217). They were with a racially mixed group of twelve (R. Bevel 18). Thomas, Farmer, Copeland, Patton, Donald and Ackerberg arrived in Jackson together around 4:45 p. m. (R. Thomas 409, 444) with a group of fifteen (R. Thomas 535). The facts governing the arrival of the two buses are almost identical.

[10] Petitioners had gathered in Montgomery, Alabama from various parts of the country (R. Thomas 311). Here they regrouped and travelled to Jackson (R. Thomas 311, 368, 371). W. B. Padgett, Alabama Department of Public Safety, testified:

> "I had read the itinerary [Freedom Rider] in newscasts, newspapers . . . after leaving Washington, D. C., it was from Augusta, Georgia, to Atlanta, Georgia, southern part of Georgia to Birmingham, Alabama; from Birmingham, Alabama to Montgomery, Alabama; from Montgomery, Alabama to Jackson, Mississippi; from Jackson, Mississippi, to New Orleans, Louisiana and lower end of Louisiana" (R. Thomas 374, 375).

[11] Padgett was at the Alabama-Mississippi state line when the first and second "Freedom Rider" buses crossed on May 24, 1961 (R. Thomas 394-398, 373, 377) and testified:

> ". . . After the first bus passed through the state line into Mississippi, the officers escorting that bus from Montgomery to the state line remained there until the second bus passed through. That would have made . . . approximately twenty-eight units of automobiles transporting state investigators, highway patrol officers, National Guard, with each bus. There were approximately five cars with heavy arms" (R. Thomas 399).

He also stated:

> "At the time the [second] bus actually arrived at the line, . . . there was one helicopter and two or three airplanes circling the area, maintaining air surveillance over this area.
>
> * * * * *

National Guardsmen and newspapermen unboarded (R. Thomas 565; Farmer 25; Bevel 22-23), petitioners walked quietly down the ramp between two lines of newspapermen and policemen[12] (R. Thomas 565, 593-594; Bevel 24) into the white waiting room[13] (R. Thomas 505, 606-607). Captain of Police Ray testified that "50 or 60 people" were inside the terminal including "twenty-five" newspapermen (R. Thomas 566, 617)[14] and "six or eight police officers." About 75 policemen with three police dogs surrounded the bus station (R. Bevel 19; Farmer 21).

Ray also testified that he had advance notice that petitioners were coming to Jackson to "create an incident" and was present at the terminal "to maintain law and order" (R. Thomas 573-574, 613; Bevel 18). He stated that people in the terminal were in a "foul mood" and "as they [peti-

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"There was no incident . . . At the time the bus actually transferred from Alabama to Mississippi, there were an estimated one hundred highway patrolmen, and National Guardmen, and a large group of Mississippi highway patrolmen and Mississippi National Guard at the time of the actual transfer" (R. Thomas 400).

[12] Captain of Police Ray testified in *Thomas*:

"The Trailways bus arrived about 4:45 p. m., parked in loading dock number eight, and after this bus stopped, a group of National Guardmen got off the bus, then a group of newspapermen or reporters, people with cameras and so forth, got off the bus; then a group of fifteen, of which Henry Thomas was one of them got off the bus. They kind of stayed together until they began walking down the ramp (R. Thomas 565).

* * * * *

"They walked in the door to the waiting room" (R. Thomas 539).

[13] The main waiting room located on the west side of the terminal was designated for white persons (R. Thomas 505, 507, 591-592), with a smaller waiting room on the east side of the terminal for Negroes.

[14] Ray testified that "thirty or forty" people were in the terminal when petitioner Bevel arrived (R. Bevel 18). See, too (R. Farmer 19).

tioners] entered the terminal, feeling that it would be best to get . . . the group . . . out of the bus station, in order to prevent violence, I . . . ordered them to move on and to move out of the terminal. They acted as though they did not hear me even though I talked in a loud tone of voice" (R. Thomas 571). However, he neither spoke to nor arrested persons allegedly threatening petitioners (R. Thomas 624; Bevel 28; Donald 34; Farmer 27; Ackerberg 73).

Wallace Dabbs, a reporter for the *Clarion Ledger* and a prosecution witness, testified that petitioners caused no violence at the time they entered the bus terminal (R. Thomas 503, 513), and that they walked peacefully into the white waiting room (R. Thomas 503, 505). Moreover, "no incidents" or "remarks of an offensive nature" occurred inside the terminal (R. Thomas 513, 631; Farmer 28), and police were "maintaining superb order in the station" (R. Thomas 513, 514).[15]

Another prosecution witness, W. C. Shoemaker of the *Jackson Daily News* testified that he saw no act of violence committed either by petitioners or other persons in the station (R. Ackerberg 52) and that the police had "everything under control"[16] (R. Thomas 541, 544, 545, 546; Farmer 38).

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[15] On cross-examination, Dabbs testified:

"Q. So the upshot of it is that during the entire period from the time that defendant arrived in the white waiting room until you saw him taken away in the paddy wagon, you saw no violence or anything untoward at all?

A. No.

Q. And the police had the situation outside on the street as much under control as they had inside the terminal?

A. I would say so, yes.

* * * * *

Q. You saw no violence in Jackson whatsoever?

A. No; that's true" (R. Thomas 517).

[16] Shoemaker wrote an article on the May 24 events which appeared in the *Jackson Daily News* on May 25, in which he stated that when the "Freedom Riders" arrived only "a few persons

(a) *Bevel and Anderson*

Petitioners Bevel and Anderson, both Negroes (R. Bevel 75-76; Anderson 239), arrived in Jackson on the first bus around 2:00 p.m. in a racially mixed group of twelve (R. Bevel 18; Anderson 217). Inside the terminal eight of them went to the restroom while four walked to the concession stand (R. Bevel 25; Anderson 218).

Captain Ray testified that he arrested the four at the concession stand first and then went into the restroom and arrested the other eight defendants (R. Bevel 30). Bevel, Anderson and their companions were alone in the restroom when Captain Ray entered and ordered them to "move on and move out of the terminal" (R. Bevel 25, 26; Anderson 228). They refused and were arrested (R. Bevel 26; Anderson 219). Bevel and Anderson were quiet and peaceful at all times (R. Bevel 34; Anderson 232).

(b) *Thomas, Farmer, Copeland, Donald and Ackerberg*

These petitioners arrived on the second bus at 4:45 p.m. (R. Donald 14, 15; Farmer 20; Copeland 15-16, 25-26; Ackerberg 48) in a group of "fourteen Negroes and one white" (R. Donald 51, 53). On entering the station they were ordered immediately to "move on and move out" (R. Thomas 571; Farmer 25; Copeland 28; Donald 17; Ackerberg 58, 64). When they did not respond they were arrested and taken to the police wagon which had been parked outside the terminal prior to their arrival (R. Thomas 625-26). Petitioner Donald testified:

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watched from the sidewalk a few blocks away." He also stated that the "police watched each arriving bus in the event more 'Freedom Riders' attempted to violate segregation laws" (R. Thomas 543).

> [W]hen I entered the Trailways bus station, several of the persons who accompanied me to the Trailways bus station were already being arrested, and I proceeded to turn around, to leave along with another companion of mine, and one officer said, 'you wait here too, you are under arrest.' He asked my name, I gave him my name, and he said, 'you are under arrest also' (R. Donald 54).

Petitioners were peaceful and quiet at all times (R. Thomas 621, 629; Donald 22; Farmer 25, 26, 36; Copeland 35).

Captain Ray, however, felt that petitioners' "presence" could cause "possible" disorder (R. Thomas 613, 620):

> Q. [T]he time you ordered defendant and his companions to leave, was there any act of violence committed, up to this moment?
>
> A. Nothing other than their presence there, by which a breach of the peace might have been occasioned (R. Thomas 613).

Ray also testified:

> Q. . . . So, the only disorderly act, if you can call it that, in the waiting room, that you saw after the arrival of the defendant and his companions, or saw anywhere in the bus terminal, was the refusal to obey your order to leave the station?
>
> A. That was the only arrest made there and that was the only disorderly conduct that had happened at that time (R. Thomas 625).

In *Ackerberg* Ray stated:

> Q. Now did you see any acts of violence committed by the defendant . . .?

A. No, his presence there was what caused the violence or would have caused it (R. Ackerberg 69).

2. May 28, 1961:

Petitioners Knight, a Negro (R. Knight 63), and Myers, a white person (R. Myers 42), were arrested around 1:30 p.m. with seven other companions in the white waiting room (R. Knight 31; Myers 15, 17).

Captain Ray testified:

> They all came in together. After they got inside the terminal, they split up. This defendant [Myers] and three others stayed together, and the other four, they moved to another part of the terminal, and then I gave them an order (R. Myers 17).

When Myers refused to obey Ray's order to move out of the terminal he was arrested (R. Myers 18). Ray further testified that everything was peaceful until Myers and his group arrived, that a crowd was in the station in an "ugly and angry" mood threatening to harm Myers (R. Myers 17), and that he "wanted to get the cause or the root of the trouble out of there and this defendant and his group was the cause or root of the trouble" (R. Myers 27). However, Ray admitted that no overt act was committed against Myers (R. Myers 27) and that Myers created no disturbance himself (R. Myers 26, 32).

Q. All right, Captain Ray. Now, the defendant walked in, and he goes immediately to a seat and sits down. That's right?

A. That's correct.

Q. Did he do anything other than go immediately to this seat and sir [sic] down?

A. No (R. Myers 27).

Petitioner Knight was arrested at the telephone booth when, according to Captain Ray, "other people in the station started towards her" (R. Knight 24). No effort was made to arrest these persons (R. Knight 24, 25). Ray stated that Miss Knight:

> [W]alked into the terminal . . . She walked in with her group; they stopped. I ordered them to move on and move out of the terminal. At that time this defendant and her group separated. This defendant walked to the west-end of the waiting room to a telephone booth (R. Knight 24).

Miss Knight was quiet and peaceful at all times (R. Knight 23, 31-32).

Ray testified that "30 or 35" people were in the terminal upon petitioners' arrival along with "12 to 15" policemen (R. Myers 16).

3. June 2, 1961:

Petitioners Reed and McDonald arrived at the Trailways terminal around 6:40 in the evening (R. Reed 16). Miss Reed, a Negro (R. Reed 60) was arrested in the white waiting room when she refused to obey Captain Ray's order to move out of the terminal (R. Reed 29). Ray testified:

> Q. When you entered the waiting room, did you see the defendant?
>
> A. I did.
>
> Q. Where was she at the time?
>
> A. She was still walking. When I entered, she was walking. She was walking to the news or concession stand.
>
> * * * * *
>
> Q. Now, as the defendant entered the waiting room and walked toward the concession stand, what did you observe?

A. I observed the crowd. At that time it became in an ugly, angry mood, and I determined that this defendant was the cause of the trouble.

* * * * *

Q. I see. And did you determine who they were mad at?

A. At this defendant and her group.

Q. All right. Did you say anything to any of these people at this time, this group of people?

A. I did not at that time.

* * * * *

Q. . . . Now, when you gave your order, what was the defendant doing . . .?

A. . . . She was standing there.

* * * * *

Q. Now, what did you say to this defendant?

A. I ordered her to move on and move out of the terminal.

Q. Did the defendant say anything, make any reply?

A. She stood there as though I had said nothing (R. Reed 27-29).

McDonald, a white person (R. McDonald 67) separated from the group and entered the "Negro" waiting room where he was immediately arrested (R. McDonald 15, 16, 17).

C. R. Keys of the Jackson Police Department testified on cross-examination:

Q. In other words, he wasn't doing anything different from the other people that came in prior to his arrival that would cause disturbance in there?

A. Nothing other, only his presence.

Q. Only his presence?

A. That is correct (R. McDonald 33).

There were sixteen police officers in the terminal (R. Reed 17).

4. June 7, 1961:

Petitioner Randolph, a Negro (R. Randolph 67) and six companions entered the Trailways terminal about 1:10 in the afternoon (R. Randolph 16). Captain Ray testified:

> I arrived at the Trailways bus terminal . . . twenty minutes before this defendant and his group arrived. At that time, everything was peaceful, normal, people going about their business in a normal way. This defendant and his group came in, they got off the bus; they all waited together until they got their luggage. They walked down the ramp together until they got to the first waiting room, and at that time, three went into that waiting room, and then this defendant and two others continued on to the next waiting room, and by that time people were beginning to mill around and moving toward this defendant (R. Randolph 18).

He determined that Randolph was the "root of the trouble, he and his group" and ordered him to leave the terminal (R. Randolph 19). Randolph refused and was arrested (R. Randolph 19). Randolph was entirely peaceful and orderly (R. Randolph 33).

B. *Greyhound Bus Terminal:*

1. May 28, 1961:

Petitioner McKinnie, a Negro (R. McKinnie 66), was arrested around 5:30 a.m. in the white waiting room of the Greyhound bus terminal (R. McKinnie 15, 66).

Captain of Police Ray testified that McKinnie:

> . . . Goes in the terminal, he kind of turns to the right after he passes the ticket office and so forth, and there

is a water cooler there. He and six others were at the water cooler, and that's when I approached this defendant because the crowd was in an ugly and angry mood after this defendant entered. I saw that there was going to be trouble, I tried to determine the cause of the trouble, and I found out the cause was this defendant and his group. So, not wanting any disturbance or any violence, I was going to remove that cause and I ordered this defendant and his group to move on and move out of the terminal. I gave that order twice, I asked if they understood the order and if they were going to obey the order, and they did not and that's when I arrested them (R. McKinnie 22-23).

2. June 11, 1961:

Petitioners Aelony, Davidov, O'Connor and Morton, all white persons (R. Aelony 103; Davidov 76; O'Connor 66; Morton 69), arrived in Jackson from Memphis, Tennessee (R. Aelony 50; Davidov 14; O'Connor 16). They were arrested as they entered the Negro waiting room of the Greyhound terminal around 12:45 p.m. in a racially mixed group of six (R. Davidov 16; Aelony 50).

Captain Ray testified that "25 or 35 people" were inside the bus terminal and that they became "ugly and angry" when petitioners entered (R. Davidov 17; Aelony 46). In order to prevent violence, he "acted quickly" and asked petitioners to move out of the terminal (R. Aelony 46, 47). Petitioners refused and were arrested (R. Davidov 19). He admitted that petitioners were peaceful, but stated that their "presence" created a disturbance.

Q. Now, Captain Ray, I believe you testified that prior to this, and at this time, this defendant had said or had done nothing, to indicate that it was his purpose to create a disturbance. I mean, he had done noth-

ing, or he had said nothing, or he made no gesture that indicated that he intended to create a disturbance?

A. No, his presence there was what created a disturbance.

Q. But he didn't do anything?

A. No, he didn't (R. Davidov 30, 31).

3. June 16, 1961:

Petitioners Pleune, Filner and Adler, white persons (R. Pleune 58; Filner 74; Adler 230), arrived in Jackson from Nashville, Tennessee at 1:10 in the afternoon (R. Filner 45, 46; Pleune 15) and were arrested as they entered the waiting room of the Greyhound terminal (R. Filner 42).

Petitioner Filner testified:

> We got off the bus. There was five of us. We walked into the waiting room, in the bus station. Sat down at the counter, and I looked around and a police officer came toward us. The other people kept watching with curiosity. He [Captain Ray] came toward us and ordered us to move on, and we didn't, because it was our constitutional right to be there, and he arrested us.
>
> * * * * *
>
> Q. Was there any indication, as far as you were able to ascertain as to what mood these people were in?
>
> A. Well, they didn't cause any trouble. Of course, some of these were watching what was going on . . . just curious, I am sure. The police officer mentioned they seemed to be advancing threateningly; I didn't notice any of this. As soon as we walked in, the police officer came toward us (R. Filner 41-42).

Filner further testified that his group had been in the station only a minute when the police walked up to them (R. Filner 42), that they were peaceful and quiet and

simply wanted something to eat after a long trip (R. Filner 42).

Captain Ray testified:

> The bus pulled in. This defendant and the group that he was with got off and walked inside the waiting room, and when they entered the waiting room, people began to get up and moved toward them. That's when I felt it necessary to act, and act quickly, to prevent any violence. At that time, he had a seat at the stool, and I ordered him to move on and move out of there. I asked him if he'd heard the order and if he was going to obey the order (R. Filner 19).

Petitioners were neither noisy nor violent (R. Filner 42). Moreover, Ray could recall no actual threats against petitioners from the crowd (R. Filner 20-23).

C. *Illinois Central Train Station:*

1. May 30, 1961:

Petitioner Sandra Nixon, a Negro (R. Nixon 69), arrived at the Illinois Central train station around 10:15 in the morning (R. Nixon 15-17) with seven companions (R. Nixon 17). She entered the white waiting room and was immediately ordered to leave by Captain Ray who testified that persons in the station became restless and threatened to harm her (R. Nixon 20). Determining that petitioner Nixon and her group was "the cause or root of the trouble" he ordered her to move out of the terminal (R. Nixon 18). She refused and was arrested (R. Nixon 18). He did not inquire of her business there and stated that she at no time spoke to him (R. Nixon 27).

2. June 8, 1961:

Petitioner Perlman, a Negro (R. Perlman 61), arrived at the train terminal at 10:10 in the morning. She was arrested upon entering the white waiting room with eight others (R. Perlman 15, 20-21).

On cross-examination, Captain Ray testified:

> Q. All right, sir. Now, Captain Ray, you said that when the defendant entered the waiting room, that you were in there, I believe, when she came in?
>
> A. That's correct.
>
> Q. What was the disposition of the people who were in the waiting room when the defendant came in?
>
> A. After this defendant and her group entered, they became in an ugly and angry mood, moved toward this defendant, started mumbling to each other and that's—
>
> Q. Do you know—, pardon me.
>
> A. And that's when I determined the cause of the trouble and felt it necessary at that time to remove that cause and I ordered her to leave.
>
> Q. Did you talk to any of these people?
>
> A. At that time?
>
> Q. At that time.
>
> A. At that time, I did not (R. Perlman 23).

3. June 9, 1961:

Bromberg, a white person (R. Bromberg 37), was arrested at 5:30 in the morning as he entered the train terminal with a racially mixed group (R. Bromberg 14, 15, 20). He was neither loud nor committed any act of violence (R. Bromberg 22).

Ray stated that "about fifteen" people were in the terminal (R. Bromberg 18) and about a dozen policemen (R. Bromberg 20). He testified:

Q. Well, explain to the Court, if you would, why with these other people you would ask them what their business was before ordering them to move on, whereas this defendant you ordered him to move on without making any inquiries as to what his business was?

A. Well, as I stated earlier, I was there to maintain law and order. When this defendant and his group entered, I felt it necessary to act and act quickly. I didn't feel like that I needed to go into a lengthy conversation, because I was there to prevent violence.

Q. Was there a danger of violence that day?

A. Yes, sir.

Q. Now from whom did you fear the violence?

A. We didn't know what to expect, but from the remarks that had been made anything could have happened.

Q. Well, were you afraid this defendant might become violent?

A. No, sir, but he was the root of the trouble.

Q. Did this defendant talk in a loud voice or curse?

A. No, sir.

Q. Or push anybody?

A. No, sir.

Q. Was he armed?

A. No, sir.

Q. Did he do anything out of the way, anything different from what any other person ordinarily would do in the train station?

A. No, sir (R. Bromberg 22-23).

4. June 20, 1961:

Petitioners Peterson, Van Roland, Pleune and Muse, all white persons (R. Peterson 69; Van Roland 84; Pleune 73; Muse 84), refused to leave the Negro waiting room

when ordered to by Captain Ray and were arrested along with ten others (R. Peterson 17; Van Roland 15; Pleune 17; Muse 17). Petitioner Van Roland testified:

> I had my bag with me. I got off the train and walked down a platform and down some stairs, I believe it was, or a ramp into what was the terminal, the waiting room in the terminal (R. Van Roland 40).
>
> * * * * *
>
> . . . I walked into the waiting room and I decided that I wanted some lunch. So I asked the first officer that I saw if there was a lunch room in the terminal. He told me there wasn't, so I decided I would just sit down on the bench in the waiting room for a few minutes until I could find out where there was a place to eat. . . . I had just about got seated when Captain Ray approached me and he asked me to move on. I asked him why, and he didn't tell me. He just ordered me to move on again, and I didn't see any reason for doing so. And at that point Captain Ray placed me and the people with me under arrest and put us in the paddy wagon that was waiting outside (R. Van Roland 42).

Van Roland further testified that police were stationed around the walls in the waiting room and that there were no other persons in the station except the police (R. Van Roland 44).

Petitioner Muse, in the same group, testified:

> . . . I was rather heavily loaded with baggage and was the last one to get off the coach, and the others of the group that I was traveling with, had gone into the waiting room by the time I got off the platform. As I approached the waiting room, I heard voices and I arrived in the waiting room to hear 'on you all.' I subsequently

> learned that that was the last of two commands to move on, and it was followed by an arrest, and we were put aboard the jail wagon (R. Muse 39).

Muse was arrested in the Negro waiting room (R. Muse 41). He saw "three colored persons sitting on benches" in the waiting room (R. Muse 41).

Captain Ray testified that Muse was present when he gave the group both orders to move on (R. Muse 50). Moreover, Ray stated that a crowd in the station was threatening petitioners at the time he arrested them (R. Muse 50, 51).

How the Federal Questions Were Raised and Decided Below

Petitioners were convicted in the Municipal Court of the City of Jackson, sentenced to sixty days suspended sentence and two hundred dollars ($200.00) fine, and appealed to the County Court of Hinds County, Mississippi for trials *de novo*. Pleas of not guilty were entered by all petitioners.

During trial in the County Court it was ruled that no evidence would be permitted as to the race of petitioners or racial segregation in travel facilities. Proof was offered at the end of trial that (1) an ordinance of the City of Jackson, Mississippi and State statutes required racial segregation on all common carriers (App. pp. 46a-57a), and (2) petitioners used the racially segregated waiting rooms on a racially desegregated basis.

At the conclusion of the State's case petitioners filed motions for directed verdict alleging:

(1) the State failed to prove the offense charged in the affidavit;

(2) a conviction would deprive them of due process of law secured by the Fourteenth Amendment to the United States Constitution because there was no evidence of guilt;

(3) that Section 2087.5 under which they were charged was unconstitutional on its face and as applied because (a) vague, (b) it failed to warn them of the conduct prohibited, and (c) it penalized conduct constitutionally protected under the First and Fourteenth Amendments to the United States Constitution;

(4) the conviction would violate the Fourteenth Amendment's equal protection clause, Article 1, Section 8, Clause 3 of the United States Constitution, as well as the Interstate Commerce Act, 49 U. S. C. 316(d) (and interpretation thereof by the Interstate Commerce Commission) in that Section 2087.5 of Miss. Code Annot., 1942 as amended, and as applied, denied them the right to use interstate bus facilities on a racially desegregated basis and deprived them of the right to move freely from state to state solely because of race.[17]

The motions were denied and petitioners were convicted and sentenced to serve four months in jail and five hundred dollars ($500.00) fine. Petitioners requested instructions to the jury requiring the jury to bring in a verdict of not guilty should they find that the only act committed by petitioners was refusing to move when ordered to do so by the arresting officer. The court refused the instruction and the jury returned a verdict of guilty.

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[17] (R. Ackerberg 32; Adler 38, 228; Aelony 75; Anderson 237, 265; Bevel 45, 73; Bromberg 36, 59; Copeland 39; Davidov 74; Donald 44; Farmer 41; Filner 36, 53; Harbour 32; Knight 35; McDonald 37; McKinnie 35; Morton 41, 67; Muse 31; Myers 35; Nixon 43, 67; O'Connor 64; Patton 40; Perlman 33, 59; Peterson 39; J. Pleune 47; K. Pleune 29, 55; Randolph 34; Reed 32; Thomas 674; Van Roland 34.)

Motions for new trial alleging that the convictions were contrary to the evidence and renewing objections raised in the motion for directed verdict were also denied.[18]

Appeals were taken to the Circuit Court for the First Judicial District of Hinds County alleging that the court below erred in:

(1) denying the motions for directed verdict;

(2) overruling the motions for new trial;

(3) refusing to permit testimony that the terminals were racially segregated by order of the Police Department, and that petitioners were in racially mixed groups; and

(4) refusing to judicially notice §§4065.3, 2065.7, 2351.5, 2351.7 and 4259 of the Miss. Code and §225 of the Mississippi Constitution, and the Jackson city ordinance (Minute Book "FF," p. 149) 1956, requiring segregation in travel facilities. The Circuit Court affirmed the convictions.

On appeal to the Supreme Court of Mississippi petitioners again alleged that the court below erred in (1) denying their motions for directed verdicts, (2) overruling the motions for new trial, (3) sustaining objections to the introduction of the ordinance of the City of Jackson requiring racial segregation in travel facilities.

In *Thomas* the Supreme Court of Mississippi affirmed the conviction and held that (1) the evidence supported the arrest and conviction of defendant for disorderly conduct, and (2) the conviction violated no state or federal law. The court stated:

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[18] (R. Ackerberg 33; Adler 229; Aelony 101; Anderson 266; Bevel 74; Bromberg 60; Copeland 66; Davidov 75; Donald 81; Farmer 69; Filner 73; Harbour 65; Knight 62; McDonald 66½; McKinnie 65; Morton 68; Muse 83; Myers 63; Nixon 68; O'Connor 65; Patton 68; Perlman 60; Peterson 68; J. Pleune 71; K. Pleune 56; Randolph 66; Reed 63; Thomas 708; Van Roland 74.)

> . . . In order for the State to convict under §2087.5, Miss. Code 1942, Rec., the following elements must be present: (1) There must be a crowding or congregating with others; (2) defendant must be in a place of business engaged in selling or serving members of the public . . . ; (3) there must be an order given to disperse or move on by a law-enforcing officer of a municipality or county; (4) the order must be disobeyed; and (5) the intent to provoke a breach of the peace, or the existence of circumstances such that a breach of the peace may be occasioned thereby.
>
> The record in this case reflects the following: (1) the defendant entered the terminal building in Jackson, Mississippi, on the day in question in the company of others; (2) the terminal is a place of business engaged in serving or selling to members of the public; (3) an officer of the Jackson Police Department ordered defendant to move on out of the area; (4) the defendant refused to obey the officer's orders and (5) the witnesses testified that at the time the defendant and his companions entered the station, the crowd of people already there became antagonistic toward defendant; that if the officer had not acted in ordering defendant to move on, there would have been violence (App. p. 12a).

The court concluded:

> In the case at bar the defendant not only knew the situation but he came to the South for the deliberate purpose of inciting violence, or, as he put it, "for the purpose of testing the Supreme Court decision in regard to interstate travel facilities." He left a trail of violence behind him in Alabama. The jury was, therefore, warranted in finding that he intended to create disorder and violence in Jackson, and that, in fact,

disorder and violence were imminent at the time when Thomas refused to obey the police officer's order to move on (App. p. 14a).

* * * * *

. . . We hold that the constitutional rights of defendant were not violated by his conviction for disorderly conduct. The state's interest in preventing violence and disorder, which were imminent under the undisputed facts, is the vital and controlling fact in this case. If the defendant had been denied the exercise of his right to enter the white waiting room, or to assemble for the purpose of exercising the right to protest or of free speech, his argument would be pertinent. But defendant is in no position to claim that he was merely exercising a constitutionally guaranteed right, for it is manifestly true that he and his associates participated in a highly sophisticated plan to travel through the South and stir up racial strife and violence. All of their activities were broadcast in a manner to create the greatest public commotion and uneasiness. When defendant and his companions reached Jackson, the police had notice of all that had transpired in Alabama. There is no evidence that the police did anything other than keep the peace. They did not deny defendant the right to enter the white waiting room and were willing and ready to escort defendant anywhere he wanted to go. This Court cannot escape the duty to accord to the police the authority necessary to prevent violence, and this is true whatever the motives of those who are about to cause the violence, or to precipitate it. In the situation the police found themselves, it was reasonable to require defendant to move on to wherever he wanted to go (App. p. 26a).

In *Farmer* the court held that the circumstances "were such that a breach of the peace was likely as a result of the presence of the appellants and those congregated with him," and in *Knight* the court again found that the evidence supported petitioner's conviction for disorderly conduct. The remaining cases were affirmed without opinion, merely citing *Thomas* and *Farmer*.

Following judgment in the State Supreme Court, suggestions of error were filed alleging, in essence, that:

(1) no evidence supported the convictions;

(2) the ordinance under which they were tried and convicted is unconstitutionally vague and failed to warn them of the conduct proscribed;

(3) the arrests and convictions were based upon a policy of racial discrimination required by city ordinance; and

(4) the convictions violated Article 1, Section 8, Clause 3 in that petitioners were deprived of the right to travel on a racially desegregated basis in interstate facilities.

Suggestions of error were overruled pursuant to which this petition for writ of certiorari is filed.

Reasons for Granting the Writ

The decisions of the Mississippi Supreme Court conflict with applicable decisions of this Court on important constitutional issues.

I.

Petitioners' Convictions Offend Due Process Because Based on No Evidence of Guilt.

Petitioners, white and Negro interstate travelers, were convicted under a disorderly conduct statute, which punishes:

> Whoever, with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned . . . crowds or congregates with others in . . . any place of business engaged in selling or serving members of the public . . . and refuses to disperse or move on, when ordered so to do by any law enforcement officer . . .

That petitioners had a clear right to use bus and train terminal facilities in the City of Jackson, Mississippi, on a racially unsegregated basis is indisputable, *Boynton* v. *Virginia,* 364 U. S. 454; *Gayle* v. *Browder,* 352 U. S. 903; *Morgan* v. *Virginia,* 328 U. S. 373; *Bailey* v. *Patterson,* 369 U. S. 373; 49 U. S. C. §316(d); 49 C. F. R. §180(a)(1)-(10) (I. C. C. regulations prohibiting racial segregation in terminal facilities serving interstate passengers), and undisputed. Despite this clear right, however, and despite petitioners' entirely lawful attempts to exercise this right, they were immediately arrested in the City of Jackson by police officers who awaited their arrival in the terminals, and were convicted. In *Thomas,* the Mississippi Supreme Court held that "the evidence shows that the officer arrested the defendant in good faith, under reasonable apprehension of an imminent breach of the peace" and that "[t]he State's

interest in preventing violence and disorder, which were imminent under the undisputed facts, is the vital and controlling fact in this case" (App. p. 26a).

This holding is patent error. It flies in the face of the records in these cases as well as repeated decisions of this Court. *Cooper* v. *Aaron,* 358 U. S. 1, affirming 257 F. 2d 33, 38-39 (8th Cir. 1958); *Watson* v. *Memphis,* 373 U. S. 526; *Wright* v. *Georgia,* 373 U. S. 284; *Buchanan* v. *Warley,* 245 U. S. 60.

In its opinion the Supreme Court of Mississippi stated that:

> . . . In order for the State to convict under §2087.5, Miss. Code 1942, Rec., the following elements must be present: (1) There must be a crowding or congregating with others; (2) defendant must be in a place of business engaged in selling or serving members of the public . . . ; (3) there must be an order given to disperse or move on by a law-enforcing officer of a municipality or county; (4) the order must be disobeyed; and (5) the intent to provoke a breach of the peace, or the existence of circumstances such that a breach of the peace may be occasioned thereby.
>
> The record in this case reflects the following: (1) the defendant entered the terminal building in Jackson, Mississippi, on the day in question in the company of others; (2) the terminal is a place of business engaged in serving or selling to members of the public; (3) an officer of the Jackson Police Department ordered defendant to move on out of the area; (4) the defendant refused to obey the officer's orders and (5) the witnesses testified that at the time the defendant and his companions entered the station, the crowd of people already there became antagonistic toward defendant; that if the officer had not acted in ordering defendant to move on, there would have been violence (R. Thomas 777-78).

The evidence in these cases clearly fails to meet the requirements for a finding of guilt under this statute. Not only is the sole evidence of "crowding or congregating" the simple fact that petitioners arrived in groups,[19] these records are barren of any indication that petitioners either intended to provoke a breach of the peace or that a breach of the peace was likely from their actions.

These petitioners did nothing unlawful. Captain of Police Ray and other prosecution witnesses agreed that petitioners were entirely peaceful and quiet at all times while in bus and train terminals in the City of Jackson, Mississippi. Not a single disorderly or violent act occurred in any terminal at any time.[20] Indeed, Ray testified that he feared no violence from petitioners. While an estimated "crowd" of white people were present in the terminals upon petitioners'

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[19] Indeed, several petitioners were arrested while sitting or standing alone or with a few other persons (R. Knight 247; McDonald 67; Van Roland 42).

[20] Q. The time you ordered defendant and his companions to leave, was there any act of violence up to this moment?

A. Nothing other than their presence there by which a breach of the peace might have occasioned (R. Thomas 587).

* * * * *

Q. So the only disorderly act, if you can call it that, in the waiting room, that you saw after the arrival of the defendant and his companions, saw anywhere in the bus terminal, was the refusal to leave—your order to leave the station?

A. That was the only arrest made there. That was the only disorderly conduct that happened at that time (R. Thomas 599-600).

In *Davidov,* Ray testified on cross-examination:

Q. Now, Captain Ray, I believe you testified that prior to this, and at this time, this defendant had said or had done something to indicate that it was his purpose to create a disturbance. I mean, he had done nothing, or he had said nothing, or he made no gestures that indicated that he intended to create a disturbance?

A. No, his presence there was what created a disturbance.

Q. But he didn't do anything?

A. No, he didn't (R. Davidov 30, 31).

arrival, numerous police officers were present to "maintain law and order." [21] The sole basis for petitioners' arrest was their mere "presence." [22]

In each case Ray testified that he had "advance notice" of petitioners' arrival, and was present at the terminals to preserve "law and order." [23] In each case he stated that a

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[21] Ray gave estimates of between 35 and 50 people as present in and around the terminals besides petitioners. However, a number of newspapermen were included in this number. Moreover, Ray's testimony is weakened by an article written by Shoemaker, a reporter for the *Jackson Daily News* and a prosecution witness in several cases, who wrote that "only a few persons watched from the sidewalk a few blocks away" (R. Thomas 543). And petitioner Van Roland testified that when he arrived at the Greyhound bus terminal, the police were the only persons present, while Ray spoke of a "crowd."

[22] On another occasion C. R. Keyes of the Jackson Police Department testified:

> Q. In other words, he was not doing anything different from the other people who came in prior to his arrival that would cause disturbance in there?
> A. Nothing, only his presence.
> Q. Only his presence?
> A. That is correct (R. McDonald 33).

[23] The principal evidence relied upon by the Court was Captain of Police Ray's testimony that he "definitely believed there would have been *possibly* a riot or some disturbance, and that *possibly* bloodshed would have taken place" (emphasis added). The records here utterly belie any such contention.

Ray and the Court also relied heavily upon the fact that some of the petitioners had met with violence in Alabama. From this the Court concluded in *Thomas*:

> "In the case at bar, defendant not only knew the situation but he came to the South for the deliberate purpose of inciting violence, or, as he put it, 'for the purpose of testing the Supreme Court decision in regard to interstate travel facilities.' He left a trail of violence behind him in Alabama. The jury was, therefore, warranted in finding that he intended to create disorder and violence in Jackson, and that, in fact, disorder and violence were imminent at the time when Thomas refused to obey the police officer's order to move on" (App. p. 14a).

The Court also pointed to the riots accompanying the attempt of James Meredith to enroll at the University of Mississippi as evidence that a race riot might have ensued from petitioner's presence. However the *Meredith* case came after petitioners' arrests.

"crowd" was in the terminal which became in an "ugly and angry mood" and began "moving towards" petitioners. Yet Ray at no time spoke to the "crowd" or ordered them to move back or out of the terminals.[24]

Evidence of an "imminent breach of the peace" is rendered even less credible in view of the numerous police officers present when petitioners arrived in the City of Jackson. Ray expressed confidence on several occasions that he had everything under control, as did other prosecution witnesses.[25]

That this evidence utterly fails to establish any conduct by petitioners which constitutes a crime is patently clear, and conviction under these circumstances is a manifest denial of due process under the Fourteenth Amendment. *Thompson* v. *Louisville,* 363 U. S. 199; *Taylor* v. *Louisiana,* 370 U. S. 154; *Garner* v. *Louisiana,* 368 U. S. 157; *Wright*

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[24] In *Perlman,* Ray testified:

> Q. What was the disposition of the people who were in the waiting room when the defendant came in?
>
> A. After this defendant and her group entered, they became in an ugly and angry mood, moved toward this defendant, started mumbling to each other and that's—
>
> Q. Do you know, pardon me—
>
> A. And that's when I determined the cause of the trouble and felt it necessary at that time to remove that cause and ordered her to leave.
>
> Q. Did you talk to any of these people?
>
> A. At that time?
>
> Q. At that time.
>
> A. At that time, I did not (R. Perlman 23).

[25] Dabbs, a reporter for the *Clarion Ledger,* testified on cross-examination:

> Q. And the police had the situation outside on the street as much under control as inside the terminal?
>
> A. I would say so, yes.

When the first two buses arrived at the Greyhound terminal, Ray had approximately 75 police officers in and around the station, along with three police dogs. The "crowd" consisted of between 35 to 50 persons (R. Thomas 566; Bevel 19; Farmer 21).

v. *Georgia,* 373 U. S. 284. Mere "presence" of Negroes or of Negroes and whites together in a public place is no crime, *Garner, supra,* nor is failure to obey the command of an officer when that command is itself violative of the Constitution. *Wright, supra.* Moreover, neither imagined nor real resentment by others is grounds for denying important constitutional rights. *Cooper* v. *Aaron, supra; Edwards* v. *South Carolina,* 372 U. S. 229, 231, 232.

II.

The Statute Used to Convict Petitioners Is So Vague, Uncertain and Indefinite as to Conflict With the Due Process Clause of the Fourteenth Amendment.

In three recent decisions, *Edwards* v. *South Carolina,* 372 U. S. 229, *Fields* v. *South Carolina,* 375 U. S. 44, and *Henry* v. *Rock Hill,* —— U. S. —— (Decided: April 6, 1964), this Court has overturned convictions obtained under a general breach of the peace statute where the offense charged was "so generalized as to be . . . 'not susceptible of exact definition.'" Here petitioners were charged and convicted under a general disorderly conduct—breach of the peace statute which punishes anyone who intends "to provoke a breach of the peace or under circumstances such that a breach of the peace may be occasioned . . . crowds or congregates with others and refuses to disperse and move on" when ordered by a law enforcement officer. As construed and as applied to petitioners, this vague statute violates due process of law.

It has been shown that petitioners committed no unlawful act and that when arrested they were simply exercising lawful rights to use interstate travel facilities free of racial discrimination. Petitioners had every reason to believe their actions would be protected. Indeed, their right to be where they were is nowhere contested. Captain Ray at no

time explained to petitioners the reason for their arrest but simply ordered them to "move on and move out of the terminals." At no time did he inquire concerning their business in the station. Moreover, he allowed numerous white persons to remain who were allegedly in an "ugly" mood as a result of petitioners' presence. In fact Ray did not even speak to the many white persons milling around the terminals after petitioners' arrival.

To convict petitioners under these circumstances and under such a broad, catchall statute is to deny due process. No actual disturbance of the peace ensued nor was this required under the Supreme Court of Mississippi's construction of the statute. No specific intent to provoke a breach of the peace was necessary nor was conduct of a violent or offensive nature. Indeed, "intent to provoke a breach of the peace" was held to be satisfied by the Mississippi Supreme Court by looking at violence occurring days before in Alabama when "Freedom Rider buses" passed through that State, and Captain of Police Ray's general opinion that people in the terminals were in an "ugly and angry mood."

To permit these convictions to stand would be to hold Negroes or racially mixed groups susceptible to arrest and conviction upon entrance in any public place in the State of Mississippi. It would also render the constitutional rights of one group of persons victim to the whim of others if their mere presence offends the sensitivities of others. Constitutional rights cannot be so treated. *Wright* v. *Georgia,* 373 U. S. 254, *Taylor* v. *Louisiana,* 370 U. S. 154.

This statute does not warn that it punishes "mere presence" of Negroes and whites together in public places. Petitioners did not and could not know that merely entering a bus or train terminal was criminally punishable. While no one would agree that the State of Mississippi

could make it a crime and punish Negro or white persons who attempted to violate unconstitutional segregation practices by merely appearing in public places, in effect that is what has been done here. A person is entitled to fair warning of what acts are forbidden. *Connally* v. *General Construction Company,* 269 U. S. 385, 393. See also, *Lanzetta* v. *New Jersey,* 306 U. S. 451, 453 ("No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes."). *Raley* v. *Ohio,* 360 U. S. 423.

More invidious still is the use of this statute to prohibit petitioners' peaceful protest against racial segregation in interstate facilities in the City of Jackson, Mississippi. This Court constantly has warned that vague penal laws, where freedom of expression is involved, cannot be tolerated. *NAACP* v. *Button,* 371 U. S. 415, 433; *Cantwell* v. *Connecticut,* 310 U. S. 296, 308, 311.

This statute offends due process for still another reason. It provides no guide by which law enforcement officers may direct persons to move on, but vests in them complete discretion to determine when a person intends to provoke a breach of the peace or "circumstances such that a breach of the peace may be occasioned." In effect, the statute permits a policeman to order a person about public establishments for any reason he deems fit subject to the peril of criminal punishment if he fails to comply. The invitation to official abuse is well illustrated in these cases. Petitioners had a right to use bus and train facilities in the City of Jackson on the same basis as other citizens. Yet they were denied this right because Captain of Police Ray alone determined that other persons objected to the presence of racially mixed groups. Not only were petitioners forced to relinquish their constitutional rights, but they were criminally convicted. Here, as was recognized in *Nesmith* v. *Alford,* 318 F. 2d 110, 121 (5th Cir. 1963):

> . . . [L]iberty is at an end if a police officer may without warrant arrest, not the persons threatening violence, but those who are its likely victims merely because the person arrested is engaging in conduct which, though peaceful and legally and constitutionally protected, is deemed offensive and provocative to settled social customs and practices. When that day comes . . . the exercise of [First Amendment rights] must then conform to what the conscientious policeman regards the community's threshold of intolerance to be.

III.

These Convictions Constitute State Enforcement of Racial Segregation in Interstate Facilities Contrary to the Equal Protection Clause of the Fourteenth Amendment, Article 1, Section 8, Clause 2 (Commerce Clause) of the United States Constitution and 49 U. S. C., Sections 3(1) and 316(d).

The State of Mississippi is dedicated to the preservation of racial segregation in all aspects of life, public and private. 17 Miss. Code Ann., §4065.3 (Compliance with the Principles of Segregation of the Races) provides:

> [T]hat the entire executive branch of the government of the State of Mississippi, and of its subdivisions, and all persons responsible thereto, including the governor, the lieutenant governor, the heads of state departments, sheriffs, boards of supervisors, constables, mayors, boards of aldermen, and other governing officials of municipalities by whatever name known, chiefs of police, policemen, highway patrolmen, . . . are hereby required . . . to prohibit by any lawful, peaceful and constitutional means, the causing of a mixing or integration of the white and Negro races in public

> schools, public parks, public waiting rooms, public places of amusement, recreation or assembly in this state by any branch of the federal government, any person employed by the federal government . . . and to prohibit, by any lawful, peaceful and constitutional means, the implementation of any orders, rules or regulations of any board, commission or agency of the federal government, based on the supposed authority of said Integration Decisions, to cause a mixing or integration of the white and Negro races in public schools, public parks public waiting rooms, public places of amusement, recreation or assembly in this State. . . .

The Fifth Circuit Court of Appeals in *United States* v. *City of Jackson,* 318 F. 2d 1, took judicial notice of Mississippi's unyielding attitude on segregation. Judge Wisdom, writing for the Court, stated:

> We again take judicial notice that the State of Mississippi has a steel-hard, inflexible, undeviating official policy of segregation. The policy is stated in its laws. It is rooted in custom. The segregation signs at the terminals in Jackson carry out that policy. The Jackson police add muscle, bone and sinew to the signs (318 F. 2d 5-6).

At the time of petitioners' arrest, a panoply of state statutes required segregation in bus and train facilities: Title 11, §2351 (separate railroad cars for Negroes and whites); §2351.5 (railroads and other carriers required to provide separate toilet facilities for intrastate passengers); §2351.7 (separate waiting rooms for intrastate passengers); Tit. 28, §7784 (separate accommodations in railroad travel); §7785 (separate accommodations in street cars and buses); §7786 (passengers on street cars, buses, etc., required to

occupy compartments assigned); §7787.5 (separate waiting rooms in bus and train terminals to have "bold letters" designating "white waiting room, intrastate passengers," "colored waiting room, intrastate passengers." Moreover, an ordinance of the City of Jackson (Minute Book "FF" p. 149, January 12, 1956) required signs designating "white" and "colored" waiting rooms in bus and train terminals "by Order Police Dept." (see App. pp. 55a-57a). These statutes have been regularly enforced without distinction between intrastate and interstate travelers. Reporter Dabbs' article in the *Jackson Daily News* plainly stated "that the police watched each arriving bus in the event more 'Freedom Riders' attempted to violate segregation laws" (R. Thomas 543).

In *Bailey* v. *Patterson,* 199 F. Supp. 595 (1961), vac. 369 U. S. 31, an action brought by Negro plaintiffs to enjoin enforcement of these segregation statutes and ordinances in the State of Mississippi and City of Jackson, Judge Rives, in his dissenting opinion, specifically found that racial segregation was maintained in travel facilities. Bus and train terminal officials admitted the existence of "white" and "colored" signs and the Chief of Police of the City of Jackson admitted that the signs were placed by the Police Department pursuant to the City Segregation Ordinance. The Mayor of the City of Jackson testified:

> Q. * * * Does the body of the ordinance, apart from the preamble, reflect the policy of the City of Jackson as you have stated it?
>
> A. The policy of the City of Jackson is certainly adopted in the ordinance, which is based on State law, that is taken from State law, and is based on exactly what I have said, the matter of separation of the races.

Judge Rives further found that state and city officials met prior to the arrival of these and other petitioners on

May 24, 1961, and discussed plans for "dealing with the Freedom Riders"; that Captain of Police Ray thereafter arrested more than three hundred "Freedom Riders" and testified in most instances that their presence there "provoked people and caused them to become disturbed." Judge Rives concluded:

> Captain Ray ventured the opinion that there might have been incidents of violence had he not arrested the Riders, but there is no indication that the situation could not have been handled by restraining or arresting the offending party (199 F. Supp. at 613).
>
> * * * * *
>
> In this case, under the facts shown after a full trial and the law applicable to these facts, I am unable to find a bona fide breach of the peace issue. Rather, the facts clearly show that the arrest [Freedom Riders] are a simple evasion to enforce segregation (at 618).

That this is a blatant and deliberate case of state enforcement of unlawful racial discrimination requires no argument. These convictions which enforce Mississippi's declared law and policy of racial segregation are in clear violation of Federal law. They violate the Fourteenth Amendment (*Gayle* v. *Browder,* 352 U. S. 903; *Lombard* v. *Louisiana,* 373 U. S. 264; *Peterson* v. *Greenville,* 373 U. S. 244), the Commerce Clause (*Morgan* v. *Virginia,* 328 U. S. 373), and the Interstate Commerce Act (49 U. S. C. §§3(1), 316(d); *Boynton* v. *Virginia,* 364 U. S. 458; *Henderson* v. *U. S.,* 339 U. S. 816; *Mitchell* v. *U. S.,* 313 U. S. 80; *NAACP* v. *St. Louis-S. F. R. Co.,* 297 ICC 335; *Keys* v. *Carolina Coach Co.,* 64 Motor Carrier Cases 769).

IV.

These Convictions Conflict With First Amendment Guarantees of Free Speech, Assembly and Association.

Petitioners' attempt to use interstate facilities on a non-segregated basis was protected by the First Amendment to the United States Constitution. It is now clear that freedom of speech encompasses non-verbal as well as verbal utterances. *Thornhill* v. *Alabama,* 310 U. S. 88 (picketing); *Burstyn* v. *Wilson,* 343 U. S. 495 (display of motion pictures); *NAACP* v. *Alabama,* 357 U. S. 449 (joining of associations); *Stromberg* v. *California,* 283 U. S. 359 (display of a flag or symbol). Indeed, a Negro sitting at a segregated lunch counter in a southern state has been recognized as engaged in a type of non-verbal expression protected by the Fourteenth Amendment. *Garner* v. *Louisiana,* 368 U. S. 157, 185 (concurring opinion).

No question exists of petitioners' right to use interstate facilities free of unlawful racial discrimination. Plainly no question exists of the propriety of petitioners' protesting unlawful racial discrimination in use of these facilities.

Edwards v. *South Carolina,* 372 U. S. 229, is controlling here. There this Court reversed breach of the peace convictions obtained after almost two hundred Negro students marched to the South Carolina State Legislature to protest racial segregation. The students sang and chanted and after forty-five minutes were ordered to disperse by law enforcement officials. Upon refusal they were arrested. While white onlookers gathered, no evidence pointed to any offensive or threatening remarks or gestures by the growd. In reversing the convictions this Court stated that "the Fourteenth Amendment does not permit the state to make criminal the peaceful expression of unpopular views." See also, *Fields* v. *South Carolina,* 375 U. S. 44; *Henry* v. *Rock Hill,* —— U. S. —— (Decided: April 6, 1964); *Cantwell* v.

Connecticut, 310 U. S. 296, 308 ("A state may not unduly suppress free communication of views . . . in the guise of conserving desirable conditions"); *Terminiello* v. *Chicago,* 337 U. S. 1, 5.

As in *Edwards,* the records here are barren of any conduct threatening or constituting a breach of the peace. While a "crowd" of white onlookers allegedly gathered to watch petitioners, no violence occurred or was even threatened and not a single incident of any kind by anyone was cited. Indeed, Captain Ray was confident that he had ample police available to maintain the peace.

For this reason as well as those stated earlier, this writ of certiorari should be granted and the convictions reversed.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX I

Opinion Below, *Thomas* v. *Mississippi*

IN THE

SUPREME COURT OF MISSISSIPPI

No. 42,987

HENRY J. THOMAS,

vs.

STATE OF MISSISSIPPI.

RODGERS, *Justice*:

An affidavit was lodged with the City Police Court of Jackson, Mississippi, charging defendant Henry J. Thomas with disorderly conduct. The ex-officio Justice of the Peace tried defendant and found him "guilty." He appealed to the Hinds County Court. The case was tried anew, with the aid of a jury, and the evidence was recorded. The jury found defendant guilty, and from the sentence of the County Court, he appealed on the record to the Circuit Court. The Circuit Judge entered an order affirming the judgment of the County Court, and from that judgment, the case has been appealed to this Court.

The defendant was charged with violating §2087.5, Miss. Code 1942, Rec., the pertinent parts of which are as follows:

> "Section 2087.5 Disorderly conduct—may constitute felony, when,

"1. Whoever with intent to provoke a breach of the the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

"(1) crowds or congregates with others in or upon * * * any other place of business engaged in selling or serving members of the public * * * and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or county, in which such act or acts are committed, or by any law enforcement officer of the State of Mississippi, or any other authorized person * * *

" * * * shall be guilty of disorderly conduct, which is made a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars ($200.00), or imprisonment in the county jail for not more than four (4) months, or by both such fine and imprisonment * * * "

The record in this case shows that defendant Thomas is a Negro who resides at St. Augustine, Florida. He is a student at Howard University in the City of Washington, D. C. He learned that CORE (an organization known as Congress of Racial Equality) was planning a series of bus rides for the purpose of testing segregation laws, and he volunteered his services as a bus rider. He then received instructions as to how he should act when violence erupted; that he should hold his hands by his side when he was being beaten with bicycle chains. Extraordinary advance publicity was given through the news media, advising the public that various racially mixed groups, calling themselves "freedom riders", were enroute through Georgia, Alabama, and Mississippi, with a "stop over" at Jackson,

Mississippi. The law enforcement officers of Alabama became apprehensive to such an extent that officers were assigned to meet the busses in Atlanta, Georgia, and to ride in the busses as they proceeded across Alabama.

On May 20, 1961, three groups of "freedom riders" reached Montgomery, Alabama, and a race riot occurred on Sunday night, May 21, 1961. The Alabama officers testified upon the trial of the instant case that the racial situation in Alabama was extremely tense. Compare Abernathy v. State, —— Ala. ——, 155 So. 2d 586, where it is said "fourteen hundred national guardsmen were on duty."

When the busses in which defendant was a passenger reached Anniston, Alabama, a large group of angry people came up and beat on the bus and cursed the occupants, including the officers in it. People lay on the pavement in front of the bus, and others lay behind the bus, so that the driver could not move without injuring them. Finally, a sufficient number of police arrived to control the crowd. When the bus left, many automobiles followed it until the tires on the bus went down and it was brought to a stop. A large crowd of people went up to the bus and began to curse the occupants. A smoke bomb was thrown into the bus and it caught fire. The police arrived and after they fired their guns, the crowd retreated. The police directed defendant and other members of his party to move out to a place of safety, and they obeyed the officers. An ambulance was brought to the scene and defendant and other occupants of the bus were taken to the hospital. Bus drivers refused to operate the busses occupied by defendant and his group of demonstrators, and defendant went back to New York and regrouped under the leadership of another individual. Defendant again accompanied a

racially mixed group of persons on two busses through Alabama and into Mississippi. This time they were accompanied by Highway Patrolmen and a contingency of Alabama National Guard to the Mississippi-Alabama state line.

In the meantime radios broadcast details of the disturbance in Alabama. Television broadcast actual scenes of the riots throughout Mississippi and Alabama, and newspapers left nothing undone in an effort to tell the Nation the progress of the so-called "freedom riders." A great many agents from the Justice Department preceded the busses and "lined the highways." The people of Mississippi became highly outraged and incensed at what they believed to be an invasion aimed at the tranquillity of the peace of the people of Mississippi.

The testimony of a banker and an automobile dealer and other prominent citizens of Jackson, Mississippi, indicated that a large percentage of the citizens of Jackson was uneasy, and apprehensive that the activity of the defendant and his companions was likely to incite a riot, particularly in view of the notoriety given the so-called "freedom rider movement."

The Mississippi National Guard and the Highway Patrolmen, armed with shotguns, and using helicopters to fly over the convoy, met the busses at the Mississippi-Alabama state line, for the purpose of protecting the caravan. Thus, this entourage moved from the state line along the highway, preceded by agents of the U. S. Justice Department, toward Jackson, Mississippi. In the meantime, the police department of the City of Jackson had been informed of the progress of the group of racially mixed out-of-state demonstrators, and also of the resentment, apprehension,

and fear engendered in the minds of individuals by the invasion, heralded by news media. The police used the local radio to ask citizens to stay away from the area of the bus station. The station was isolated by the police, and a corridor was established around the block in which persons and traffic were required to "move on." Nevertheless, in spite of the precautionary efforts of the police, groups of men began to assemble outside the corridor; windows above the street in air-conditioned buildings were opened and it was observed that many persons were peering out of and leaning from the windows. Policemen, who could be spared from the picket line around the block, were stationed on the ramp outside the bus station and eight or ten within the station. Persons, who did not have a ticket, and those, who could not show that they had business at the station, were required to "move on."

The bus, in which defendant was a passenger, arrived at Jackson, Mississippi's Continental Bus Station at 4:45 P. M., May 24, 1961. The National Guard personnel debarked and moved to their appointed positions outside the bus station. Defendant, in company with his companions, proceeded up the ramp, passed by the colored waiting room, and entered the white waiting room. Nothing was done to prevent or obstruct the group from entering the white waiting room. Captain J. L. Ray was in charge of the police at the station. He followed the defendant into the white waiting room. He testified that many persons got up and moved toward defendant, and that he observed the people were in an ugly mood. He said some of the persons he had required to leave the bus station suggested "if you let us handle this situation, we'll get rid of this out-of-town group coming here, causing all this trouble

. . .". And he further stated: "As they entered the terminal, feeling that it would be best to get this defendant, Henry Thomas, along with the group he was with, out of the bus station, in order to prevent violence, I approached this group of which Henry was a part, ordered them to move on and move out of the terminal. They acted as though they did not hear me, even though I talked in a loud tone of voice . . .". He further said: "I definitely believe that there would have been possibly a riot or some disturbance, and that possibly bloodshed would have taken place." He said: "I gave the order twice, then I asked if they refused to obey the order, at which I received no response." He said: "I was trying to prevent violence", and when defendant refused to move on, he was arrested. The officer stated he would have been happy to have helped defendant get to wherever he wanted to go.

Testimony shows that Jackson was the destination of defendant, and there is no testimony as to why defendant would not move out of the bus station after having reached his destination, and after having asserted his right to enter the white waiting room.

There were fifteen persons in the group, including defendant, and their names and addresses were as follows: Rev. Grady H. Donald, 1423 Edgehill Avenue, Nashville, Tennessee; John H. Moody, Jr., 917 Wilcox Street, Petersburg, Virginia; John L. Copeland, 2715 Torgett Street, Nashville, Tennessee; Lucretia R. Collins, Fort Bliss, El Paso, Texas; Peter M. Ackerberg, 5424 Arlington Avenue, New York City; Clarence L. Thomas, Jr., 407 East Bradley Street, Champagne, Illinois; Henry J. Thomas, Box 156-A, Elton, Florida; Earnest Patton, Jr., 1429 John Johnson Avenue, Nashville, Tennessee; James L. Farmer, 85 Bedford Street,

New York City; John R. Lewis, 1800 White Creek Heights, Nashville, Tennessee; Frank G. Holloway, 917½ Tonty Street, New Orleans, Louisiana; Doris J. Castle, 917 Tonty Street, New Orleans, Louisiana.

I.

There are two questions presented by the appeal to be determined by this Court, growing out of two areas of legal concept: (1) Did the officer under the conditions here prevailing have the right to arrest the defendant for disorderly conduct within the meaning of §2087.5, Miss. Code 1942, Rec.; and does the evidence support the conviction? (2) Do the State and Federal Constitutions prevent the conviction of an individual under the circumstances here shown because he claims at the time to be exercising constitutional rights?

The pertinent part of §2470, Miss. Code 1942, Rec., states: "An officer or private person may arrest any person without warrant, for an indictable offense committed, or a breach of the peace threatened or attempted in his presence; * * *".

Section 2469, Miss. Code 1942, Rec., states: "Arrests for criminal offenses, and to prevent a breach of the peace, or the commission of a crime, may be made at any time or place."

A breach of the peace was punishable under the common law, and was defined in its broad sense to include any infraction upon the public order and tranquillity by any act or conduct inciting to violence or tending to provoke or excite others to like conduct. 8 Am. Jur., §3, Breach of Peace, p. 834.

Personal violence was not a necessary element under the common-law definition of breach of the peace. One textwriter points out: "If it were, communities might be kept in a constant state of turmoil, fear, and anticipated danger from the wicked language and conduct of a guilty party, not only destructive of the peace of the citizens but of public morals without the commission of the offense. The good sense and morality of the law forbid such a construction." 8 Am. Jur., Breach of Peace, §3, pp. 834-835. Moreover, an act which if committed at a certain time and place would not amount to a breach of the peace, may constitute a crime if committed at another time or place under different circumstances, and whether or not the act is a breach of the peace can only be determined in the light of circumstances surrounding the act. State v. Hebert, 121 Kans. 329, 246 P. 507; 48 A. L. R. 81; Davis v. Burgess, 54 Mich. 514, 20 N. W. 540; State v. Reichman, 135 Tenn. 653, 188 S. W. 225; Shields v. State, 187 Wisc. 448, 204 N. W. 486, 40 A. L. R. 945; State v. Christie, 97 Vt. 461, 123 A. 849; 8 Am. Jur., supra, §4, p. 835; State v. Cooper, 205 Minn. 333, 285 N. W. 903, 122 A. L. R. 727.

Under the pressure of modern metropolitan life, various states have enacted laws on the subject of disorderly conduct. It has been pointed out that under the authority of some of these statutes, the failure to comply with the orders of a policeman, such as an order to move on, or to desist from picketing, may constitute disorderly conduct. See 17 Am. Jur., Disorderly Conduct, §2, p. 188; Anno. 83 A. L. R. 788; Bennett v. City of Dalton, 25 S. E. 2d 726, 69 Ga. App. 438 (1943); People v. Hipple, 263 N. Y. 242, 188 N. E. 725 (1934); People v. Ward, 287 N. Y. S. 432, 159 Misc. 328 (1936); People, on Complaint of Whelan v.

Friedman, 14 N. Y. S. 2d 389 (1939); People v. Hussock, 23 N. Y. S. 2d 520, 61 S. Ct. 733, 85 L. Ed. 1107 (1940-1941); People v. Kieran, 26 N. Y. S. 2d 291 (1940); People v. Levner, 30 N. Y. S. 2d 487 (1941); People v. Richards, 31 N. Y. S. 2d 457, 177 Misc. 912 (1941); People v. LoVecchio, 185 Misc. 197, 56 N. Y. S. 2d 354 (1945); State v. Jasmin, 168 A. 545 (Vt. 1933); People v. Kopezak, 153 Misc. 187, 274 N. Y. S. 629 (1934).

The State of New York has such a law. McKinney's Consolidated Laws of New York, Book 39, Part 1, Penal Law, §722, Disorderly Conduct, Anno., p. 383. This section makes it a violation of the law to "(3) Congregate with others on a public street and refuses to move on when ordered by the police; * * *".

In the case of People, on Complaint of Whelan v. Friedman, 14 N. Y. S. 2d 389 (1939), the Court pointed out that in the prosecution for disorderly conduct by holding a public meeting on the street and refusing to obey a police officer's order to move on, defendant could not successfully claim that his constitutional rights of free speech and to conduct public meetings in the street had been violated.

In the case of People v. Galpern, 259 N. Y. 279, 181 N. E. 572, 83 A. L. R. 785, it was shown that four or five friends were congregating on a public street and an officer directed these persons, including defendant, to move on. The right of the officer to make such an order was upheld under a statutory provision specifically defining disorderly conduct, including congregation with others, on a public street, and refusal to move on when ordered by police, whereby a breach of the peace may be occasioned. The Court held that the statute applies even though defendant were con-

ducting himself in an orderly and inoffensive manner, and his acts were probably not unreasonable. The Court pointed out that "Police officers are not the final arbiters of the rights of citizens * * * Reasonable discretion must, in such matters, be left to them, and only when they exceed that discretion do they transcend their authority and depart from their duty. The assertion of the rights of the individual upon trivial occasions and in doubtful cases may be ill-advised and inopportune. Failure, even though conscientious, to obey directions of a police officer, not exceeding his authority, may interfere with the public order and lead to a breach of the peace. Then the Legislature may determine whether such conduct is 'disorderly', and shall subject the individual to punishment." See the following cases upholding convictions for congregating with others: Anno. 65 A. L. R. 2d 1152; People v. Bogin, 248 N. Y. 530, 162 N. E. 512; People v. Hipple, 263 N. Y. 242, 188 N. E. 725; People v. Hussock, 6 Misc. 2d 182, 23 N. Y. 2d 520, certiorari denied, 312 U. S. 659, 61 S. Ct. 733, 85 L. Ed. 1107; People v. Garvey, 6 Misc. 2d 266, 79 N. Y. S. 2d 456; People v. Friedman, 6 Misc. 2d 266, 16 N. Y. S. 2d 925.

It has been said that the general outline for legislation upon the subject in this country seems to have been furnished by the Statute of 5 George IV, Chap. 83, which was a revision of pre-existing statutes of the same class. See 17 Am. Jur. 187, Note 2, Stoutenburgh v. Frazier, 16 App. DC 229, 48 L. R. A. 220.

In State v. Taylor, 38 N. J. Super. 6, 118 A. 2d 36, the defendant, who used loud and offensive language in interference of the officer in the lawful discharge of his duty, was convicted of assault and battery on a police officer. Defendant appealed, and the appellate court sustained the

holding of the lower court. The record shows that two police officers, patrolling a beat after midnight, noticed a group of people, all Negroes, congregated around parking meters at Springfield Avenue and West Street where their automobile was parked. There had been numerous complaints about theft from parking meters, and so they walked across the street to investigate. While the officers were talking to the group, defendant came upon the scene and pushed his way into the center of the group, demanding to know what was going on. Upon being asked whether or not he belonged to the group, defendant said he did not. Whereupon, he was told that this was police business and that he should be on his way. Defendant refused to move and entered into a tirade against the officers. An altercation ensued, and the Court held, in effect, that failure to obey a police order to move on can be justified only where circumstances show conclusively that the order was purely arbitrary and not calculated in any way to promote public order.

In the instant case, in order for the State to convict under §2087.5, Miss. Code 1942, Rec., the following elements must be present: (1) There must be a crowding or congregating with others; (2) defendant must be in a place of business engaged in selling or serving members of the public (or in one of the other places enumerated in the statute); (3) there must be an order given to disperse or move on by a law-enforcing officer of a municipality or county; (4) the order must be disobeyed; and (5) the intent to provoke a breach of the peace, or the existence of circumstances such that a breach of the peace may be occasioned thereby.

The record in this case reflects the following: (1) The defendant entered the terminal building in Jackson, Mississippi, on the day in question in the company of others; (2) the terminal is a place of business engaged in serving or selling to members of the public; (3) an officer of the Jackson Police Department ordered defendant to move on out of the area; (4) the defendant refused to obey the officer's orders and (5) the witnesses testified that at the time the defendant and his companion entered the station, the crowd of people already there became antagonistic toward defendant; that if the officer had not acted in ordering defendant to move on, there would have been violence.

It is argued, in effect, that defendant committed no violence and since he was at a place he had a right to be, he did nothing to provoke violence or a breach of peace, therefore, his arrest was illegal, although the officer may have had probable cause to believe other people were about to do violence which was engendered by the fact that he exercised his right to be in the place where he was arrested.

The evidence in this case does not bear out the position assumed by the defendant. The testimony shows that defendant was acting as an agent for an organization known as "CORE"; that this organization desired to test the segregation laws of certain states, and that in order to do so, mixed groups of people were sent into this area after advance extraordinary publicity was given, advising the people in these states that waves of mixed "freedom riders" were enroute to their community. The defendant knew that his activity and participation in a previous "freedom ride" into Alabama had precipitated violence and caused the burning of a bus and the hospitalization of the occupants. Nevertheless, the defendant "regrouped with others" to return

to this troubled section of the country again to prove his right, although he knew it was likely to "stir up the people." The evidence shows he expected to cause violence. He expected to be whipped with bicycle chains. In short, he came to Jackson, Mississippi, under the auspices of CORE to show his disapproval of segregation laws and to incite violence in a series of incidents rather than as he claimed to prove his right to travel unhampered in interstate commerce. The defendant and his companions obviously realized that such a publicized invasion might create a holocaust and race riot. It is common knowledge that such activity has created serious riots not only in the South but in other sections of the country. (See Note I.)

The officer in charge at the bus station testified, however, that he knew the situation and repeatedly stated that a riot was believed to be imminent. After the defendant and his group had reached their destination at Jackson, Mississippi, and had proven their right to enter the white waiting room, and the right to assemble, they were requested to "move on". The officer in charge, in an attempt to control the situation at a time when everyone was tense with fear to such an extent that the mere striking of a door with a kodak caused newsmen to jump—had a right to hold one crowd back and tell another crowd or individual to "move on." Suppose the officer had not asked these people to "move on", what then? It is not the business of a peace officer to try a lawsuit, but it is his business to keep the peace. The officer does not have a lawyer walking by his side advising him what to do next, and he cannot have the same calm deliberation as one may enjoy who reads of an incident from a cold, printed page. Nevertheless, an officer is not the final judge of his actions as a peace officer. His conduct is always subject to review.

In Bullock v. Tamiami Trail Tours, Inc., 266 F. 2d 326, a damage suit was brought by certain colored passengers and his "apparently white wife," both of whom were natives of Jamaica, for injuries from an assault which occurred in Florida. The Court pointed out that it was the duty of the bus company to notify foreigners of the custom of segregation in the South, and the Court said with reference to the fact that plaintiff, a colored man, was sitting in the front part of the bus with a white woman "We can visualize no stronger case than this to show a situation where two bus drivers and the bus company officials should have reasonably anticipated that mischief was hovering about and that the Bullocks were in some danger."

In the case at bar the defendant not only knew the situation but he came to the South for the deliberate purpose of inciting violence, or, as he put it, "for the purpose of testing the Supreme Court decision in regard to interstate travel facilities." He left a trail of violence behind him in Alabama. The jury was, therefore, warranted in finding that he intended to create disorder and violence in Jackson, and that, in fact, disorder and violence were imminent at the time when Thomas refused to obey the police officer's order to move on.

The Legislature may define disorderly conduct and prescribe punishment therefor. This is an offense proscribed by statute or ordinance and is not cognizable as an offense under the common law. When used in the legal sense of conduct prohibited by statute, or ordinance, it has a well-established meaning relating to public peace and good order.

We have reached the conclusion in the instant case that the acts of the defendant, under the circumstances here in-

volved, were sufficient to sustain his conviction under §2087.5, Miss. Code 1942, Recompiled.

II.

We consider next the question: Does the claim of defendant that he was exercising his constitutional rights make him immune from arrest and conviction for disorderly conduct under the facts of this case?

The gist of appellant's argument is, first, that the defendant was a traveler in interstate transportation, and, as such, he had the right to use the public facilities offered by the bus company without discrimination, and that, since he had traveled by interstate bus to Jackson, Mississippi, he was immune from arrest although his acts might have resulted in a breach of the peace.

In the outset, it should be remembered that the police power to preserve the peace and tranquillity of the people is reserved in the states subject to limitations imposed by the state and federal Constitutions. See list of cases set out under §255, 11 Am. Jur., Constitutional Law, p. 986; also 16 C. J. S., Constitutional Law, §177, p. 906, §185, p. 922; Hart v. State, 87 Miss. 171, 39 So. 523; Donnell v. State, 48 Miss. 661; State v. Armstead, 103 Miss. 790, 60 So. 778; State v. J. J. Newman Lumber Co., 102 Miss. 802, 59 So. 923.

The Fourteenth Amendment to the United States Constitution does not take away from states their police power. 11 Am. Jur., §261, Constitutional Law, p. 995; Barbier v. Connolly, U. S. Rep. 113, p. 27 (Cal. 1885).

It is also generally recognized that it is the duty of the states to preserve peace in interstate commerce and that the states have the right to do so under the state police

power. If such were not true, the highways throughout this nation would be permanently patrolled with Federal Agents. See 11 Am. Jur., Constitutional Law, §265, p. 1002; State, ex rel., Collins, Atty. Gen. v. Senatobia Blank Book & Stationery Co., 115 Miss. 254, 76 So. 258.

It is pointed out in the case of St. Johnsbury and Lake Champlain R. R. Company v. Hunt, 60 Vt. 588, 15 A. 186, that in order to serve a process issued in a civil action, by which he is commanded to arrest the body of the defendant, a railroad engineer, an officer may lawfully stop a train or cars run by such engineer, for the purpose of making the arrest.

We do not believe the case of Boynton v. Virginia, 364 U. S. 454, cited by appellant, is in point in this case; there the defendant was charged with having violated a trespass statute.

In the case at bar the defendant and his companions had debarked at their destination and had moved into the waiting room; they had passed the ticket window and their business with the bus company was obviously concluded. There was no good reason why defendant should not have obeyed the officer and moved out of the situation which was rapidly deteriorating into serious trouble, unless, of course, the activities of the defendant were designed to aggravate others and incite them to violence. In the present case it is apparent that the officer acted in good faith, and with reasonable cause, to prevent violence.

Feiner v. People of the State of New York, 340 U. S. 315, 95 L. Ed. 295, 71 S. Ct. 303 (1950), is particularly significant and pertinent to the constitutional issues here. A young man was making a speech in a predominantly Negro neighborhood, before a mixed audience of about 95

people, making derogatory remarks concerning public officials and indicating that Negroes should rise up in arms and fight for equal rights. In view of the excitement aroused by his speech, a police officer asked him to stop, he ignored these requests, and was arrested and convicted of disorderly conduct. The New York statute is somewhat similar to Miss. Code §2087.5. The New York Court of Appeals affirmed the conviction. 300 N. Y. 391, 91 N. E. 2d 316. The United States Supreme Court also affirmed. It gave considerable weight to the good faith finding of the trial court that the police officers were justified in taking action to prevent a breach of the peace; that the officers were acting in good faith, motivated solely by concern for preservation of order and protection of the general welfare. The Court then said:

> "It is one thing to say that the police cannot be used as an instrument for the suppression of unpopular views, and another to say that, when as here the speaker passes the bounds of argument or persuasion and undertakes incitement to riot, they are powerless to prevent a breach of the peace. Nor in this case can we condemn the considered judgment of three New York courts approving the means which the police, faced with a crisis, used in the exercise of their power and duty to preserve peace and order. The findings of the state courts as to the existing situation and the imminence of greater disorder coupled with petitioner's deliberate defiance of the police officers convince us that we should not reverse this conviction in the name of free speech."

We think *Feiner* is in point and applicable here.

In the case of Taylor v. Louisiana, 370 U. S. 154 (1962), six Negroes were convicted in the state court of violating

Louisiana's breach-of-the-peace law, and were fined and sentenced to jail. Four of them went into a waiting room customarily reserved for white patrons at a bus depot and when requested by police to leave, they refused to do so, claiming they were interstate passengers. The other two were arrested while sitting nearby in an automobile which had brought the six to the bus station. There was no evidence of violence before, but the trial court said that the mere presence of Negroes in the white waiting room was likely to give rise to a breach of the peace and was sufficient evidence of guilt. The two petitioners sitting nearby in an automobile which had brought the six to the bus station were convicted of counselling and procuring the first four to violate the law. In that case there was also testimony that immediately upon petitioners' entering the waiting room, many of the people there became restless and some onlookers climbed in the seats to get a better view. These persons, however, moved, on order of the police. There was no evidence of violence. The record shows that the petitioners were quiet, orderly and polite. The trial court said, however, that "the mere presence of Negroes in a white waiting room was likely to give rise to a breach of the peace." The United States Supreme Court said: "Here, as in *Garner* v. *Louisiana,* 368 U. S. 157, the only evidence to support the charge was that petitioners were violating a custom that segregated people in waiting rooms according to their race, a practice not allowed in interstate transportation facilities by reason of the federal law." The conviction of the defendants was reversed.

The difference between the facts in *Taylor* and the instant case is obvious. There was no evidence to support the charge in that case, whereas in the instant case the

evidence is overwhelming that the officer acted under the police power of the State of Mississippi to preserve the peace. It is one thing to say the interstate transportation cannot be segregated and an entirely different thing to say that people may incite violence by fanfare and action calculated to incite violence.

The desire of the courts to protect the constitutional rights of individuals should not result in curtailing, or taking from the states the right and duty to preserve the peace. Beer Company v. Mass., 97 U. S. 25 (1877).

In Garner v. Louisiana, 368 U. S. 157, 7 L. Ed. 2d 207, 82 S. Ct. 248 (1961), there was a consolidated appeal from convictions in a Louisiana court under that state's breach of the peace statute. It defined disturbing the peace as "the doing of any of the following in such a manner as would foreseeably disturb or alarm the public: * * * (7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

In *Garner,* two Negro students took seats in the lunch counter of a drug store in Baton Rouge. In *Briscoe,* the lunch counter at which seven students sought service was in the restaurant section of the Greyhound Bus Terminal in Baton Rouge. In *Hoston,* seven Negro students took seats at a lunch counter in Kress's Department Store in Baton Rouge. In all except *Hoston,* the management did not ask the defendants to leave. The manager at Kress's called the police, they arrived, and ordered the students to leave. Petitioners did nothing except ask for service, and the arresting officer said he "believed they were disturbing the peace by sitting there." When they declined to obey the order to leave, they were placed under arrest by the officer.

The Court held that the convictions were so totally devoid of evidentiary support as to render them unconstitu-

tional, under the Due Process Clause of the Fourteenth Amendment; that they did not rest upon any evidence which would support a finding that the defendants had caused a disturbance of the peace. The Court assumed that the Louisiana courts might construe the statutes to encompass the traditional common-law concept of disturbing the peace, and permitted the police to prevent an imminent public commotion, even though caused by peaceful and ordinary conduct on the part of the accused, but the court pointed out that the defendants made no speeches, carried no placards, and did nothing beyond their mere presence at the lunch counter to attract attention to themselves or others. The manager of Kress's testified that he "feared some disturbance might occur." However, this fear was completely unsubstantiated by the record. The Court pointed out that the police "who arrested the petitioners were left with nothing to support their actions except their own opinion that it was a breach of the peace for petitioners to sit peacefully in a place where custom decreed they should not sit. Such activity, and the circumstances of these cases, is not evidence of any kind, and cannot be so considered either by the police or by the courts."

In sharp contrast with *Garner,* the facts in the instant case amply sustain appellant's conviction under Code §2087.5. The evidence shows that the officer arrested the defendant in good faith, under reasonable apprehension of an imminent breach of the peace.

We are cognizant of Edwards v. South Carolina, 372 U. S. 229, 9 L. Ed. 2d 697, 83 S. Ct. 680 (1962), where 187 Negroes, charged under the common-law crime of breach of the peace, were convicted under the following facts: The defendants gathered at a church and then walked to the

South Carolina Statehouse grounds in Columbia, the capital. Their purpose was to protest their dissatisfaction with alleged discriminatory actions against Negroes. Thirty-six officers were present, and they were permitted within the next thirty or forty minutes to walk single file or two abreast in an orderly way through the grounds, carrying placards. During this time 200 to 300 onlookers had collected, and during this period, there was no evidence to suggest threats, but mere curiosity. The police advised the defendants that unless they dispersed within fifteen minutes they would be arrested. The Negroes declined to do so, and they were arrested. The Supreme Court of South Carolina affirmed the conviction. The United States Supreme Court on appeal accepted the South Carolina court's decision that the petitioners' conduct constituted a breach of the peace under the State law. But, on an independent examination of the record, it concluded that South Carolina infringed petitioner's constitutionally protected right of freedom of speech and assembly, and freedom to petition for redress of grievances. *Edwards* did not involve any substantial problem of balancing First Amendment rights against the police power of the state. The instant case, on the contrary, requires us to apply facts in a different context.

The question here is whether a state is constitutionally prohibited from enforcing laws to prevent breach of the peace in a situation where city officials in good faith believed, and the record shows without dispute, that disorder and violence were imminent, merely because the activities constituting that breach involve claimed elements of constitutionally protected speech and assembly. The answer, we think, is clearly in the negative, on the basis of the un-

disputed facts in this record. The constitutional rights of appellant to assemble with others and to freely express his views are manifest. Yet they are and must be subject to the preservation of good order, under the police power of the state, where violence and disorder are imminent.

In People v. Kopezak, 274 N. Y. S. 629, the Court held that, although defendants had the right as a group to gather or assemble for lawful purposes to protest in peaceful manner against injustices or oppressions, nevertheless, their walking up and down the street in front of their landlord's premises, carrying signs asking for a rent-strike against firetrap conditions, constituted disorderly conduct.

People v. Levner, 30 N. Y. S. 2d 487, involved hundreds of pickets, members of a union and of organizations with similar interests, who gathered with placards to picket the mayor's home at a time when he was on vacation. It was held there was justification for the police officer's order for them to disperse, and those who refused to obey were properly found guilty of disorderly conduct. The Court pointed out that a police officer need not wait to take action until the crime or disorder has occurred, since his obligation is also preventive, and that the constitutional rights of peaceful assembly and freedom of speech did not permit the defendants to violate a law against disorderly conduct.

In People v. Richards, 177 Misc. 912, 31 N. Y. S. 2d 457, where a Long Island State Park Commission concessionaire operated a restaurant as a necessary facility in a state park, there was no labor dispute in the record. Picketing of park restaurant by female pickets in bathing suits carrying signs for the purpose of secondary boycott caused large crowds to gather. The disobeying of an order of park patrolmen constituted disorderly conduct, and a violation

of an ordinance of the commission prohibiting display of advertising in parks and prohibiting parades except by permit in parks and requiring all persons to obey orders of local park officers did not violate the defendants' right of assembly and free speech; since these rights are relative and may be regulated in the interest of all, and must be exercised in subordination to the general comfort and convenience and in consonance with peace and good order.

In People v. Burman, 154 Mich. 150, 117 N. W. 589, where the court was considering a conviction of a defendant for carrying a red flag in a parade in violation of an ordinance relating to riots and disturbances, etc., (but which did not in turn refer to the carrying of red flags) it was held that the carrying of red flags in the parade violated the ordinance, and there is no constitutional right to display a red flag in a procession where those composing the procession know that the natural and inevitable consequence will be to disturb the public peace and tranquillity, in violation of the ordinance. Freedom of speech and assembly are not absolute, but may be restricted under the police power of the state. Whitney v. California, 274 U. S. 357, 71 L. Ed. 1095, 47 S. Ct. 641; Hughes v. Superior Court, 339 U. S. 460, 94 L. Ed. 985, 70 S. Ct. 718; International Brotherhood v. T. C. W. H. Union & Hanke, 339 U. S. 470, 94 L. Ed. 995, 70 S. Ct. 773; State v. Sugarman, 126 Minn. 777, 148 N. W. 466.

In People v. McWilliams, 22 N. Y. S. 2d 571 (1940), the defendant was arrested under a charge of making an anti-Semitic speech in violation of New York's disorderly conduct statute, §722, Subsecs. 1, 2, of the New York Penal Law, viz:

"Section 722 of the Penal Law reads in part as follows:

"Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:

"1. Uses offensive, disorderly, threatening, abusive or insulting language, conduct or behavior;

"2. Acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others; * * *."

The Court's opinion stated:

"As recently stated by the Court of Appeals in a case under section 722, 'acts charged as disorderly conduct must be public in character, and such as actually do tend to disturb the public peace and quiet.' People v. Monnier, 280 N. Y. 77, at pages 78 and 79, 19 N. E. 2d 789, 790.

"It is not essential that there be an actual breach of the peace. People v. Nesin, 179 App. Div. 869, 167 N. Y. S. 49; People v. Bevins, 74 Misc. 377, 134 N. Y. S. 212, affirmed 149 App. Div. 935, 134 N. Y. S. 1141.

"The test in each case is whether the defendant's conduct under the circumstances is likely to lead to disorder or public disturbance. It will be seen that, in applying this test, the courts have necessarily passed judgment upon the competing social interests that would be served by the defendant's freedom of action, and those served by penalizing his conduct and utterances as objectionable.

"It has also been held that to violate the statute, the threat need not be verbal; it may derive its significance from the circumstances. People v. Sinclair, 86 Misc. 426, at page 435, 149 N. Y. S. 54, affirmed People on Complaint of Wilson v. Sinclair, 167 App. Div. 899, 151 N. Y. S. 1136.

"The right to assemble peaceably in the streets and public places of the city, like the right to distribute literature, is protected against state interference by the Federal Constitution. Hague v. Committee for Industrial Organization, 307 U. S. 496, 59 S. Ct. 954, 964, 83 L. Ed. 1423.

"In that case, however, the court specifically said that this right 'may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order.'

* * * * *

"As in the case of all 'relative' rights, the point at which conduct in the course of a meeting becomes unlawful must be ascertained by the words employed, the intent of the speaker, the reaction of those there assembled and to some extent, where necessary, by balancing conflicting social interests. Against the public interest in freedom of discussion, it is necessary to weigh 'general comfort and convenience' and the 'peace and good order' of the community * * *

"The opinion thus recognizes not only the power of the State to punish abuses of the right, but its duty to maintain order in connection with street meetings. That duty is discharged, in this State, by the enforcement of section 722 of the Penal Law."

In summary, we hold that the constitutional rights of defendant were not violated by his conviction for disorderly conduct. The state's interest in preventing violence and disorder, which were imminent under the undisputed facts, is the vital and controlling fact in this case. If the defendant had been denied the exercise of his right to enter the white waiting room, or to assemble for the purpose of exercising the right to protest or of free speech, his argument would be pertinent. But defendant is in no position to claim that he was merely exercising a constitutionally guaranteed right, for it is manifestly true that he and his associates participated in a highly sophisticated plan to travel through the South and stir up racial strife and violence. All of their activities were broadcast in a manner to create the greatest public commotion and uneasiness. When defendant and his companions reached Jackson, the police had notice of all that had transpired in Alabama. There is no evidence that the police did anything other than keep the peace. They did not deny defendant the right to enter the white waiting room and were willing and ready to escort defendant anywhere he wanted to go. This Court cannot escape the duty to accord to the police the authority necessary to prevent violence, and this is true whatever the motives of those who are about to cause the violence, or to precipitate it. In the situation the police found themselves, it was reasonable to require defendant to move on to wherever he wanted to go.

III.

Finally, it is contended that the statute (§2087.5) under which defendant was prosecuted is so vague and uncertain that it is void and unenforceable. Mississippi has not yet

passed on this question, but it appears that our statute is somewhat similar to that of the New York Penal Law, Consol. Laws, p. 49, §722.

The New York court pointed out in People v. Hussock, 23 N. Y. 2d 520, cert. den., 312 U. S. 659, 61 S. Ct. 733, 85 L. Ed. 1107, that, "It is clear from the record that although the complaint especially charged a violation of subdivision 2 of said Section 722, the Court found defendant guilty of refusing to move on when ordered so to do by the policeman. In other words, the conviction was based upon a violation of Subsection 3 of said Section 722, pursuant to which a person may be adjudged guilty of disorderly conduct 'who congregates with others on a public street and refuses to move on when ordered by the police.' * * * A great deal of appellant's brief is taken up by the contention that Section 722 as applied by the Court below is unconstitutional in that it deprives defendant of his liberty of assembly, freedom of speech and of the press and of his liberty to worship according to the dictates of his conscience. * * * From a reading of the record we are of the opinion that defendant was properly convicted * * * ."

In United States v. Harriss, 347 U. S. 612, the Court held: "If the general class of offenses as to which a statute is directed is plainly within its terms, the statute will not be struck down as vague, even though marginal cases could be put where doubts might arise." See: Roth v. United States, 354 U. S. 476; Winters v. New York, 333 U. S. 507.

After careful analysis of §2087.5, Miss. Code 1942, Rec., we conclude that it is not vague and indefinite, and does not deny appellant in this respect due process of law under the Fourteenth Amendment to the Constitution of the United States. The act points out in specific terms the

elements of the offense and the constituent elements of it. See Amsterdam, The Void for Vagueness Doctrine, 109 U. of Pa. L. Rev. 67 (1960), reprinted in Selected Essays on Constitutional Law, pp. 560-599 (1963).

We are therefore of the opinion that the order of the circuit court affirming the judgment and conviction of the defendant in the county court should be affirmed.

CONVICTION AND SENTENCE OF DEFENDANT AFFIRMED. ALL JUSTICES CONCUR.

Note 1:

Under the authorities of this State, this Court can take judicial notice of historical facts. Day v. Smith, 87 Miss. 395, 39 So. 526; Clark & Company v. Miller, 154 Miss. 233, 122 So. 475; Moore v. Grillis, 205 Miss. 865, 39 So. 2d 505, 10 A. L. R. 2d 1425. This Court does take notice that the citizens of Mississippi later (September 30, 1962) underwent the shock of such a riot at the University of Mississippi, in which lives were lost and property was damaged. The President of the United States sent into Mississippi some 32,000 regular Army troops, and these troops remained in Mississippi for many months.

Concurring Opinion, *Thomas* v. *Mississippi*

IN THE

SUPREME COURT OF MISSISSIPPI

No. 42,987

HENRY J. THOMAS,

v.

STATE OF MISSISSIPPI.

BRADY, *Justice,* Specially Concurring:

I concur in the opinion of my colleagues, and suggest these additional reasons why the verdict and sentence of the trial court should be affirmed.

An objective, factual analysis of the circumstances which existed at the time appellant was arrested clearly and unequivocally distinguishes this case from the cases relied upon by appellant in support of his contention that his arrest was illegal, and violated his constitutional rights of speech, assembly, non-segregated travel in interstate commerce, and the due process clause of the Fourteenth Amendment.

The cases cited in the majority opinion are *Garner* v. *Louisiana,* where two Negro students took seats at a lunch counter in a drugstore; *Briscoe* v. *Louisiana,* where seven students sought service in the restaurant portion of a Greyhound Bus Terminal; *Hoston* v. *Louisiana,* where seven Negro students took seats at a lunch counter in a variety store; and *Taylor* v. *Louisiana,* where four Negroes

went into the white waiting room of a bus depot leaving two companions outside sitting in the car which had brought all six to the station.

The records prove that in all of the four cases cited above the petitioners did absolutely nothing but seat themselves and ask to be served. There is no trail of turmoil and violence following the petitioners along their routes to their destinations. No national racial organizations were financing and master-minding their courses of action as in the case at bar. No National Guardsmen accompanied the other petitioners, in a bus, in order that safe travel might be afforded them, as was the case here. In these four cases and all others cited by appellant there was no anticipated, large-scale, exacerbated conflicts, no deliberate mass generation of strife and turmoil, no sectional campaign strategy involving several sovereign states with premeditated interstate movements synchronized and methodically executed step by step, which, when interrupted by mob violence, required a retreat and reforming of plans and procedures and a recoaching and retutoring of the participants—all of which is shown to exist in the case at bar.

In the four above cited cases, and in all the other cases cited by appellant, we find the foregoing evidentiary facts wanting. In addition thereto, in the cases relied upon by appellant there was not, as is in the case at bar, a nationwide, hourly publicity program carried on through the media of television and radio hook-ups, which on the hour or half-hour interrupted all programs to propagandize and publicize the misnamed "Freedom Riders" sorties. In the cases cited by appellant there were no fourteen hundred National Guardsmen called into service to prevent mob violence,—or seventy-five policemen who had to be detailed to the bus stations to isolate the same by a cordon from

contact with any persons save those properly using the terminal.

The Attorney General's Office and the Justice Department played no part in the four and other cases, but in the case at bar a vital role was played and Department of Justice officers accompanied the riders. In the four and other cases cited by appellant there was little or no concern or excitement, while in the case at bar, because of the publicity, propaganda, trail of violence aforesaid, excitement and feeling had risen to a fever pitch so that when the busses arrived carrying appellant (and his fourteen confederates), all appellant had to do was to demurely enter the bus station like a marionette with his fourteen confederates. The stage of violence had already been set.

The perfectly executed, premeditated scheme of appellant, his associates, and affiliates, in which he played a leading role, had already created by the aforesaid propaganda a highly volatile and explosive condition at the bus station in Jackson, Mississippi, and the slightest incident would have triggered the potential violence which would have generated into a bloody riot.

The evidentiary support essential to justify the arrest of the appellant was present. The order of the policeman to move on was justified, not because of any subjective conclusion in his mind, but by the objection realization that a violent breach of the peace was emminent.

The case of Edwards v. South Carolina can afford but little benefit to appellant for the reason that although there were one hundred and eighty-seven Negroes who had left their church and had walked single file or two abreast around the Capitol grounds in an orderly manner carrying placards protesting discriminatory action against Negroes, the case is completely devoid of any of the premeditation,

propaganda, exciting of public feeling, acts of violence, and impending bloodshed as was present in this case. In *Edwards* the police acted after thirty or forty minutes of continuous parading because a curious crowd of some two or three hundred persons had collected on the streets to watch the picketing. The officers subjectively decided that the marching would have to stop and the marchers disperse within fifteen minutes or be arrested. The marchers did not desist and were arrested. There was absolutely no impending violence shown at the time of the arrest, but only the possibility that it might arise. The distinction between *Edwards* and this case is too obvious to merit further consideration.

The transcendent issue presented here is: Can a nonresident citizen, in a deliberate effort to prove a statute of a state unconstitutional, while traveling in interstate commerce, violate with impunity that statute and other statutes regulating the maintenance of peace, order and tranquility within that State, and thus supersede or nullify the State's right to regulate and control its internal domestic affairs?

It is a corollary of durable judicial administration that the judiciary must guard and protect the respective limited powers of the separate branches of our State and Federal governments, of which it is a part, and not be an instrument for, or participate in, any procedure or function which is deliberately calculated to alter or destroy by judicial decree or fiat the very foundations upon which that representative government reposes, and which likewise insures the continued lawful and wise operation of that judiciary. It is inherent in self-government that a State shall possess the essential police powers and the right to exercise the

same in the maintenance of peace and order and in regulating and conducting its domestic affairs. Mass demonstrations, or threats thereof, intimidations, altercations and violence, or conduct calculated to incite and produce the same, are the antithesis of self-government under the law geared to the maintenance of peaceful and orderly existence.

These strife-fomenting junkets, planned by individuals and groups erroneously called "freedom riders," and poorly disguised as an exercise of constitutional guarantees, are the harbingers of government operation, not under law but under groups of men or committees, the highest expression of which is represented by the Communist order, throughout the world.

The collective rights of the citizens to enjoy peace and order and be protected from breaches thereof are synonymous with the State's duty and right to maintain peace, order and tranquility in its domestic affairs. There is nothing in the Constitution of the United States or amendments thereto, and particularly the fourteenth amendment, which gives preference to the individual rights of the citizens of the various States over their collective rights as citizens thereof. As yet the rights of the individual citizen of this country are not absolute and must yield to the rights of the majority of citizens.

If there be a paramount right essential to the maintenance of orderly and peaceful self-government in the various states, it must be the right of the State to see that its citizens are safe in their persons and in their property from nationwide mass demonstrations, intimidations, breaches of the peace and from disorderly conduct deliberately planned and calculated to cause breaches of the peace and actual violence. The degree to which this collective right of the citizens is successfully protected by the States

and subdivisions thereof varies directly with their respective authority and power to maintain peaceful and orderly conduct among all citizens—the primary objective of self-government.

In order that the sacred individual rights of the citizens may not be impaired and may endure, it is imperative that the various states be permitted to perform their inherent, common law duties and prerogatives of maintaining peace and order among their citizens in all their varied personal contacts and associations. The failure, refusal, or prohibition of performance of this high duty of maintaining peace, tranquility, law and order on the part of the States or the political subdivisions thereof is a positive, certain and swift way to destroy completely all local and State governments which compose this nation, and thus create uncontrollable, endless turmoil and violence and its inescapable ultimate—a ruthless, totalitarian or monolithic State where the rights of the regimented individual count for naught.

Today when whirlwinds of strife, rebellion and revolution are shaking the foundations of most of the civilized nations of the world, because of the inability or a complete failure on the part of those nations and subdivisions thereof to maintain peaceful and orderly conduct in the usual and customary life of its citizens, we solemnly assert that the premeditated plans of a group of nonresident citizens, regardless of their social beliefs, political power or philosophy, economic or ethnic status to create strife and violence in order to test the constitutionality of State laws or city ordinances, cannot thereby vitiate or destroy the sacred, nondelegable, inexorable duty which a city or State owes to all its citizens to maintain peace and order. We hold this to be true even though the group of nonresident citi-

zens assert the subtle subterfuge that they are merely exercising their constitutional rights of freedom of speech, assembly, and uninhibited passage in interstate commerce in justification of their premeditated and well executed conspiratory scheme.

A State which cannot, or will not, protect the safety of all citizens and their property rights, which cannot, or will not, exercise its inherent common-law police powers reserved and guaranteed to it, to regulate its internal domestic affairs in such a situation as is presented here, has already lost its attributes and characteristics as a sovereign state. It is, in fact, no longer a State but some type of unautonomous association which exists merely because of the sufferance of an all-powerful entity which tolerates its existence.

With proper deference to all concerned, regardless of constitutional subterfuge, legal sophistry, or judicial legerdemain, the communal sinister and divisive plots to create antagonisms, to breed hatred, and produce violence and bloodshed in this State among peoples of different racial origin who have lived together harmoniously for almost 200 years shall not become stark realities through failure of this Court to recognize the inviolate constitutional rights of the citizens of this and other states to lawfully maintain peace, order and tranquility in their domestic affairs by punishing those persons who deliberately flaunt and violate their laws governing the same, and who simultaneously demand constitutional immunity to do so.

For these additional reasons, in my opinion, the judgment of the trial court is affirmed.

McElroy and Rodgers, *JJ.*, Join in This Opinion.

Opinion Below, *Farmer* v. *Mississippi*

IN THE

SUPREME COURT OF MISSISSIPPI

No. 42,983

JAMES L. FARMER,

vs.

STATE OF MISSISSIPPI.

GILLESPIE, *Justice*:

James L. Farmer was charged by affidavit with violation of Sec. 2087.5, Miss. Code of 1942, which denounces disorderly conduct. A judgment of conviction in police court was appealed to county court where trial de novo was had and Farmer was again convicted. From that judgment he appealed to circuit court where the case was considered on the record made in county court and the judgment was affirmed. Farmer then appealed to this Court.

On May 24, 1961, Jackson, Mississippi, was in a state of crisis. The police had information that appellant and others were coming to Jackson on a Continental Trailways bus to create an incident or trouble. The bus from Montgomery, Alabama, was scheduled to arrive at 4:45 P.M.[1] The excitement and anticipated difficulties attending ap-

[1] As a matter of interest, see *Thomas* v. *State*, No. 42,987, decided by this Court February 17, 1964. It is there reflected that appellant was a fellow traveler with Thomas, defendant in that case, and appellant and Thomas were arrested at the same time.

pellant's arrival in Jackson are indicated by the fact that the Jackson Police Department had taken elaborate precautions. Seventy-five policemen were dispatched to the immediate area of the Continental Trailways Bus Terminal. Officers were stationed on all streets in the vicinity of the bus terminal, on parking lots, on the loading ramps at the terminal, and inside the waiting rooms. People were not allowed to congregate in the area and no one was allowed to enter the immediate area of the terminal except those having business there and newspapermen. The people generally were required by the police to keep moving or otherwise do as the police directed. When the bus arrived from Montgomery, a group of armed National Guardsmen got off first, then appellant and his companions got off and entered the waiting room wherein were twenty or more newspapermen and twenty-five or more other people.

While no one actually attempted an assault on appellant with any kind of weapon, the people in the terminal were in an angry, ugly and violent mood and began converging on appellant. Captain J. L. Ray, who was in charge of the police inside the terminal, and who was sent on this mission to preserve the peace, ordered appellant to move on and out of the terminal. Appellant ignored the order and Captain Ray gave the order again. He then asked appellant if he was going to obey the order. Upon appellant ignoring Captain Ray's order and question, he was arrested. There is no evidence that appellant had any further business in the waiting room. The undisputed testimony of an experienced police officer and a newspaperman was that the circumstances were such that a breach of the peace was likely as a result of the presence of the appellant and those congregated with him. All the facts and circumstances surrounding appellant's arrest were shown by the testimony of Captain Ray and a newspaper reporter.

The first question raised by appellant's brief is whether the proof was sufficient to sustain the conviction. We hold it was. The constituent elements of the offense charged are (1) a crowding or congregating with others, (2) in a place of business engaged in serving the public, (3) the giving of an order to disperse or move on by a proper officer, (4) failure to obey the order, and (5) the existence of circumstances such that a breach of the peace might be occasioned by refusal to obey the order. *Thomas* v. *State,* No. 42,987, decided February 17, 1964.

The first four stated elements were shown without question. The fifth element was also proven by sufficient evidence. The witnesses were of the opinion that the circumstances were such that a breach of the peace would probably have occurred. The circumstances attending the giving of the order to move on were shown, and the jury had ample evidence from which to draw an inference that a breach of the peace was imminent unless appellant and his party moved on to wherever they wished to go. It is significant that appellant does not claim he had any further business at the bus station. We hold that the evidence was sufficient to sustain the jury verdict of guilty. Thomas v. State, supra, and authorities there cited. The facts in the present case are substantially the same as in *Thomas,* except in *Thomas* there was evidence of the riots and violence which attended the travels of the "freedom riders" across Alabama on their way to Mississippi, and some additional testimony was offered of the excitement attending the arrival of the "freedom riders" in Jackson. Appellant concedes in his brief that the facts in the "freedom rider" cases (including *Thomas*) "show a generally identical fact pattern."

Appellant also contends that his conviction is invalid because (1) it denies him the Federal right to unsegregated interstate travel guaranteed by the interstate commerce act, and (2) the statute as applied deprives appellant of equal protection of law and due process of law guaranteed by the Fourteenth Amendment to the United States Constitution, and (3) the statute as applied deprives appellant of the right of freedom of speech, assembly, and association guaranteed by the Fourteenth Amendment to the United States Constitution, and (4) the statute on its face and as applied is so vague as to amount to a denial of the due process of law under the Fourteenth Amendment to the United States Constitution.

These exact questions were raised in *Thomas* and were duly considered and rejected by the Court in that case. It would be useless to again discuss those questions.

The appellant did not testify. He offered no testimony that he was denied the right of free speech, protest, or assembly for any lawful purpose, or to do any act relating to travel. Appellant claims immunity from the laws of this State making it a misdemeanor to disobey an officer when the officer is making a reasonable effort to prevent a breach of the peace, but offered no proof whatever that he was in fact seeking to exercise any such guaranteed right. The proof showed that Captain Ray acted in good faith in an effort to keep the peace under exceedingly difficult circumstances. It cannot be contended that Captain Ray acted arbitrarily or capriciously. The right of the police to manage people in situations such as that revealed by this record must be upheld.

AFFIRMED.

ALL JUSTICES CONCUR.

Opinion Below, *Knight* v. *Mississippi*

IN THE

SUPREME COURT OF MISSISSIPPI

No. 42,958

PAULINE EDYTHE KNIGHT,

vs.

STATE OF MISSISSIPPI.

LEE, *Chief Justice*:

Pauline Edythe Knight was convicted by the Police Justice of the City of Jackson, acting as an ex-officio Justice of the Peace of Hinds County, Mississippi, of a violation of Section 2087.5, Code of 1942, Rec., being a charge of disorderly conduct. She appealed to the County Court of Hinds County where there was a trial de novo, resulting in a verdict of guilty as charged. Thereafter she appealed to the Circuit Court of Hinds County, where the judgment and sentence was affirmed. She has prosecuted her appeal to this Court.

Simply stated, the evidence was to the following effect: The date and occurrence of this alleged offense was about 1:30 P. M. on May 28, 1961, and the place was the Continental Trailways Bus Terminal in the City of Jackson. Captain J. L. Ray and a detail of other officers from the police department of the City were sent to the Terminal for the purpose of maintaining peace and order. They dant and others were coming to the City of Jackson for had advance notice, through police channels, that the defen-

the purpose of creating an incident. The officers put in appearance at the Terminal prior to the arrival of the bus and had heard citizens of Jackson and Hinds County expressing themselves about the mission of such persons. The condition in and around the Terminal at that time was peaceful.

When the defendant and her group of seven others, after disembarking from the bus, entered the west (white) waiting room of the Terminal, the mood of the fifty people, including some newspapermen, on the inside, immediately changed. It became "ugly and nasty." The people began to move in and toward the group. The officers saw expressions on the faces of the people and heard their talk about this crowd and their accusations that the group were a bunch of agitators and trouble makers. The defendant used no vulgar or indecent language and made no unusual gestures; but she appeared to be afraid. At no time did she advise the officers that she had business in the waiting room, nor did she assert any claim that she was exercising her right of free speech or any other right.

Captain Ray, seeing the change in the attitude of the people, and deeming that the defendant and her group were the root of the trouble, and believing that, under the circumstances then existing, a breach of the peace was about to occur, twice ordered the defendant and the other members "to move on." When they refused, he arrested all of them.

The appellant has assigned and argued, in this case, the same alleged errors on the part of the trial court as were set out and argued in the case of Henry J. Thomas v. State, No. 42,987, decided by this Court on February 17, 1964, and not yet reported in the official reports. The opinion in that case deals with those several questions and cites

the authorities on which the affirmance of that case was rested. See also James L. Farmer v. State of Mississippi, No. 42,983, decided March 2, 1964, and likewise not yet reported.

The reasons set forth in those cases and the principles there enunciated also govern and control the decision in this case. A further feature of these cases will be commented upon hereafter.

On cross examination of a State witness, counsel for the defendant sought to establish the identification of the defendant by race, but the objection of the State was sustained by the court. The defendant's position was based on the Fourteenth Amendment to the Constitution of the United States and the objection should have been overruled.

Of course, the admission or exclusion of evidence must result in prejudice and harm, if a cause is to be reversed on that account. Rule 11 of the Revised Rules of the Supreme Court of Mississippi 1953. Actually the record discloses that, immediately before the State began the introduction of its evidence, the defendant was present and was arraigned and entered a plea of not guilty. Obviously the jury saw her at the time, and all during the trial, and could tell whether she was a white person or a Negro. Besides, after the State rested, counsel for the defendant, with the consent of the court, made the statement into the record, out of the presence of the jury, that the defendant was a Negro and that she went into the west waiting room of the Terminal, which was designated "white waiting room." In the first sentence of that brief, the appellant asserts: "The appellant was arrested on May 28, 1961, with a racially mixed group shortly after they entered the white waiting room of the Trailways Bus Terminal in Jackson, Mississippi."

In the Thomas case, supra, the opinion, in note 1, observed that this Court can take judicial notice of historical facts, and cited the following cases: Day v. Smith, 87 Miss. 395, 39 So. 526; Clark & Co. v. Miller, 154 Miss. 233, 122 So. 475; Moore v. Grillis, 205 Miss. 865, 39 So. 2d 505; 10 A.L.R. 2d 1425.

This Court, like everyone else, is somewhat conversant with historical facts. Hence it knows that slavery, as a legal institution, existed in this country from the earliest Colonial days. That status continued unabated even after the Declaration of Independence was proclaimed to the world in 1776 and thereafter beyond the adoption of the Constitution itself. As a matter of fact, it took a cruel and bloody civil war to uproot it from all sections of the country. Even after the newly freed slaves were enfranchised, there was little difference thereafter in the racial attitudes insofar as social intercourse and acceptance were concerned. Certain sections of the country, since the time when the memory of man runneth not to the contrary, because of physical traits and differences between the white and colored races and other disparities, real to them although perhaps imaginary to others, observed and practiced segregation of the races. Even the Great Crusader for Freedom and the Emancipator of the Slaves recognized that these differences placed a severe limitation on the full measure of freedom for them. Separate schools, in many areas, were provided. But suddenly the equalitarian doctrine began to take root in the land and has apparently met with substantial acceptance in recent years. Within a decade novel constructions have nullified settled constitutional questions. Segregation in schools and in all means of public transportation has been declared at an end by judicial fiat. The cry by certain groups for conformity to

their beliefs rings out endlessly over the land through the various media of communications. Large numbers of people, in this broad land, are steeped in their customs, practices, mores and traditions. In many instances, their beliefs go as deep or deeper than religion itself. If, in the lapse of time, these principles, sacred to them, shall be disproved, then it may be accepted that truth will prevail. But, until those principles have been tested in the crucible of time, no abject surrender should be expected, much less demanded. History shows that there has always been friction between different ethnic and religious groups in varying degrees. Compare the intense animosity which has existed between Jew and Arab, Greek and Turk, and Irish and English. From the lessons of history, it has been learned that "though the mills of the gods grind slowly, yet they grind exceeding small" and that human nature makes little change from day to day, month to month, year to year, and century to century.

In a free and civilized society, differences of opinion will arise, and freedom of expression must be permitted at proper times and in proper places. But a cardinal principle requires that the State must always have the power to take such measures as may be necessary to prevent violence among its disputant citizens. The Thomas case cites Feiner v. New York, 340 U. S. 315, 95 L. Ed. 295, 71 S. Ct. 303, a 1950 case, which affirmed a conviction of the defendant on a charge of disorderly conduct growing out of his inflammatory speech to an audience on the street in which there was an appeal and exhortation to racial prejudice. The opinion in the Thomas case pointed out the similarity of the New York statute to Section 2087.5 of the Miss. Code. It likewise cited the case of Bullock v. Tamiami Trail Tours Inc., 266 Fed. 2d 326, in which the United States Fifth

Circuit Court of Appeals dealt with the measure of care devolving upon a bus driver toward his passengers, namely, a colored man and his "apparently white wife" while sitting together on the front seat of a bus in Florida. The opinion in that case by Judge Rives pointed out that the employees of the bus company should have notified these passengers of the segregation customs in the South. The opinion said in part: "We can visualize no stronger case than this to show a situation where two bus drivers and the bus company officials should have reasonably anticipated that mischief was hovering about and that the Bullocks were in some danger."

This record, stripped down to the naked truth, established these facts: The authorities had advance notice that the defendant and others in a racially mixed group were coming to Jackson for the purpose of creating an incident. There were a substantial number of people in the white waiting room at the bus terminal and they were in a peaceable mood. When this group of Negroes and whites congregated in the white waiting room, the mood of the people changed quickly, the people gave evidence of hostility, and started toward them. The evidence showed that the officers believed that a breach of the peace was imminent. Is the officer helpless to do anything in order to avert violence? Can it be expected that he shall constitute himself as a magistrate, hold a hearing on the grounds, and decide the relative questions then existing? Anger and rage throttle reason; and, when reason is dethroned, force is the only answer. Governmental force must be empowered to prevent violence and bloodshed. Regardless of rights, none of which were then asserted, riots and bloodshed must be averted; otherwise anarchy will prevail within the country.

AFFIRMED.

ALL JUSTICES CONCUR.

APPENDIX II

Mississippi Segregation Statutes

MISSISSIPPI CODE OF 1942

§ 2351—

"If any person or corporation operating a railroad shall fail to provide two or more passenger cars for each passenger train, or to divide the passenger cars by a partition, to secure separate accommodations for the white and colored races, as provided by law, or if any railroad passenger conductor shall fail to assign each passenger to the car or compartment of the car used for the race to which the passenger belongs, he or it shall be guilty of a misdemeanor, and, on conviction shall be fined not less than twenty dollars nor more than five hundred dollars." Source: Code of 1892.

§ 2351.5—

"Every railroad company, bus company or other common carrier for hire owning, maintaining or operating a passenger depot, bus station or terminal where a waiting room for passengers is maintained and operated shall cause to be constructed and maintained in connection with such reception or waiting room two closets or retiring or rest rooms to be exclusively used by white passengers in intrastate commerce arriving and departing from such depot, bus station or terminal and the following notice shall be painted or shown in bold letters on the door of one: "Rest Room, white female only in intrastate travel", and on the other: "Rest Room, white male only in intrastate travel"; and likewise two closets or retiring or rest rooms shall

be constructed and maintained for colored passengers in intrastate travel with like signs painted or shown in bold letters on the doors thereof, substituting the word "colored" for "white", and such owner or operator shall see that the closets or rest rooms are equally clean and in equally good sanitary condition.

"No white person shall enter, frequent, occupy or use the colored closets or rest rooms required by this act, and no colored person shall enter, frequent or occupy or use the white closets or rest rooms required by this act, except, however, regularly employed persons of the owner or operator of the passenger depots, bus stations or terminals may enter such closets or rest rooms in the discharge of their assigned duties.

"Any person violating the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars ($1,000.00) or confined in jail for not more than one year, or both." Source: Laws of 1956.

§ 2351.7—

"1. Any person traveling in intrastate travel by rail, bus, airline or other common carrier for hire who knowingly or wilfully enters or attempts to enter the waiting room not marked and provided for persons other than his or her race as required by law, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one thousand dollars ($1,000.00) and imprisoned in jail not more than sixty (60) days, or both such fine and imprisonment.

"2. No white person shall enter, frequent, occupy or use the colored waiting room of any depot, bus station or terminal when such waiting room is marked in bold letters as required by law; and no colored person shall enter, frequent, occupy or use the white waiting room of any depot, bus station or terminal when same is marked in bold letters as required by law, except, however, regularly employed persons of the owner or operator of depots, bus stations or terminals may enter same in the discharge of their assigned and required duties.

"Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars ($1,000.00) and imprisoned in jail for not more than one year, or both.

"3. No action or suit in law or in equity may be brought in any court of this state against any law enforcement officer for damages for false arrest of any passenger because of a violation of this act, nor shall any common carrier of passengers, or its employees be subject to suit for damages on account of such common carrier of passengers or its employees complying with the provisions of this act.

"4. In the event any part or parts of this act shall be held unconstitutional, the remaining portion of this act shall remain in full force and effect." Source: Laws of 1956.

§ 7784—

"Every railroad carrying passengers in this state shall provide equal but separate accommodations for

the white and colored races by providing two or more passenger cars for each passenger train, or by dividing the passenger cars by a partition to secure separate accommodations; and the conductor of such passenger train shall have power, and is required, to assign each passenger to the car, or the compartment of a car, used for the race to which such passenger belongs; and should any passenger refuse to occupy the car to which he or she is assigned by the conductor, the conductor shall have power to refuse to carry such passenger on the train, and for such refusal neither he nor the railroad company shall be liable for damages in any court." Source: Code of 1892.

§ 7785—

"All persons or corporations operating street railways and street or municipal buses, carrying passengers in this state, and every common carrier by motor vehicle of passengers in this state as defined by section 3 (e) of chapter 142 of the laws of 1938 (§ 7634, Code of 1942), shall provide equal, but separate, accommodations for the white and colored races.

"Every common carrier by motor vehicle of passengers in this state, as defined by section 3 (e) of chapter 142 of the laws of 1938 (§ 7634, Code of 1942), by buses or street cars operated entirely within the corporate limits of a municipality, or within a radius of 5 miles thereof, shall divide its passengers by the use of an appropriate sign 4 x 9 inches, for the purpose of, and in a manner that will "suitably provide for, a separation of the races, and all other buses and motor vehicles carrying passengers for hire in the

state of Mississippi shall use a latticed movable partition extending from the top of the seat to the ceiling of the vehicle, said partition not to obstruct the view of the driver of the vehicle to secure such separate accommodations; provided, however, that this act shall not apply to buses operated exclusively for the carrying of military personnel; and the operators of such passenger buses shall have power, and are required, to assign each passenger to the compartment of the bus used for the race to which such passenger belongs; and in no case shall any passenger be permitted to stand in the aisle of the compartment in which he does not belong and is not so assigned; and should any passenger refuse to occupy the compartment to which he or she belongs and is assigned, the operator shall have the power to refuse to carry such passenger on the bus; or should either compartment become so loaded in transit as not to permit the taking on of any further passengers for that compartment, then the bus operator shall not be required and shall refuse to take on any further passengers in violation of this act. Even though such additional passengers may have purchased and may hold tickets for transportation on the said bus, the only remedy said passengers shall have for failure or refusal to carry them under such circumstances is the right to a refund of the cost of his ticket, and for said refusal in either case neither the operator nor the common carrier shall be liable for damages in any court. Such partition may be made movable so as to allow adjustment of the space in the bus to suit the requirements of traffic." Source: Code of 1956.

§ 7786—

"The operators of such street cars and street buses and motor vehicles, as defined by chapter 142 of the laws of 1938 (§§ 7632-7687, Code of 1942) shall have power and are required to assign each passenger to the space or compartment used for the race to which such passenger belongs.

"Any passenger undertaking or attempting to go into the space or compartment to which by race he or she does not belong shall be guilty of a misdemeanor, and upon conviction, shall be liable to a fine of twenty-five dollars ($25.00), or, in lieu thereof, by imprisonment for a period of not more than thirty (30) days in the county jail; and any operator of any street car or street bus or motor vehicle as herein defined, assigning or placing a passenger to the space or compartment other than the said one set aside for the race to which said passenger belongs shall be guilty of a misdemeanor and, upon conviction, shall be liable to a fine of twenty-five dollars ($25.00), or, in lieu thereof, to imprisonment for a period of not more than thirty (30) days in the county jail." Source: Code of 1906.

§ 7786.01—

"Every person or corporation operating street railways and street or municipal buses, carrying passengers in this state, and every common carrier of passengers in this state by motor vehicle, as defined by section 3 (e) of chapter 142 of the laws of 1938 (§ 7634, Code of 1942), guilty of wilful and continued failure to observe or comply with the provisions of this act shall be liable to a fine of twenty-five dollars

($25.00) for each offense, and each day's violation of the provision hereof shall constitute a separate violation of this act; provided, however, that in the case of persons or corporations operating street railways and street or municipal buses, the fine shall be ten dollars ($10.00) instead of twenty-five dollars ($25.00)." Source: Laws of 1944.

§ 7787—

"All officers and directors of street railway companies who shall refuse or neglect to comply with the provisions and requirements of the two preceding sections shall be deemed guilty of a misdemeanor, on conviction shall be fined not less than one hundred dollars or be imprisoned in the county jail not less than sixty, and not more than six months, and any conductor or other employee of such street car company having charge of the same, who shall refuse or neglect to carry out the provisions of this chapter shall, on conviction, be fined not less than twenty-five dollars or be imprisoned in the county jail for not less than ten days nor more than thirty days for each and every offense; provided, that nothing herein contained shall be construed as applying to nurses attending children of the other race." Source: Code of 1906.

§ 7787.5—

"1. In all passenger depots, bus stations or terminals owned, operated or leased in the State of Mississippi by a railroad company, bus company or any other common carrier of passengers, the owner or operator thereof shall cause to be constructed and

maintained waiting or reception rooms as will secure the comfort of the passengers.

"In such depots, bus stations or terminals there shall be constructed, provided and maintained for the white intrastate passengers a separate waiting or reception room, on each entrance to which shall be painted or shown in bold letters the following:—"White waiting room, intrastate passengers"; and in such depot, bus station or terminal there shall be constructed, provided and maintained a separate waiting or reception room for the colored intrastate passengers, on each entrance to which shall be painted or shown in bold letters the following:—"Colored waiting room, intrastate passengers."

"2. Any common carrier of passengers for hire or any railroad or bus company, whether an individual or corporation, which fails or refuses to comply with the provisions of this act shall be liable in the penal sum of one thousand dollars ($1,000.00) per day for each day of such failure or refusal, to be recovered by suit filed in the county in which such depot, bus station or terminal is situated, by either the attorney general, the district attorney of the district, or the county attorney of the county in which said passenger depot, bus station or terminal is situated.

"In addition to the penalty provided herein, the Attorney General of the State of Mississippi or the district attorney of the district, or county attorney in the county in which said depot, bus station or terminal is situated may file suit in the chancery court of such county for a mandatory injunction to compel compliance with the provisions of this act, and the chancery

court of any county wherein the provisions of this act are not complied with shall have jurisdiction to issue an injunction to require compliance with this act, and to hold in contempt of court any railroad company, bus company or any other common carrier of passengers failing to comply with the orders and decrees of the court directing compliance with this act.

"3. The requirements of this act shall not be applicable to any person, firm or corporation operating a place of business wherein said person, firm or corporation acts only as ticket agent for a bus company or other common carrier in addition to his regular business and wherein no passenger waiting room or reception room is maintained." Source: Laws of 1956.

City Ordinance Requiring Carriers to Maintain Separate Facilities

AN ORDINANCE REQUIRING COMMON CARRIERS OF PERSONS TO MAINTAIN IN THE CITY OF JACKSON SEPARATE WAITING ROOM AND REST ROOM ACCOMMODATIONS AND FACILITIES FOR THE WHITE AND COLORED RACES; MAKING IT UNLAWFUL FOR ANY PERSON OF THE WHITE RACE TO USE SUCH ACCOMMODATIONS AND FACILITIES DESIGNATED AND SET APART FOR PERSONS OF THE COLORED RACES; MAKING IT UNLAWFUL FOR ANY PERSON OF THE COLORED RACES TO USE SUCH ACCOMMODATIONS AND FACILITIES DESIGNATED AND SET APART FOR PERSONS OF THE WHITE RACE; PRESCRIBING PENALTY FOR VIOLATION HEREOF; AND MAKING THIS ORDINANCE IMMEDIATELY EFFECTIVE.

WHEREAS, the citizens of the City of Jackson, Mississippi, have been accustomed for many generations to separation of the White race from the Colored races in the use of waiting room and rest room facilities and accommodations provided by common carriers of persons; and

WHEREAS, a sudden intermingling of the races necessarily involved in the common use of such waiting room and rest room accommodations and facilities would likely result in disturbances, breaches of the peace, disorder and confusion; and

WHEREAS, the Council of the said City of Jackson owes the duty to its citizens, regardless of race, color, creed or station in life, to maintain good order and to prevent breaches of the peace, and thereby to promote the health and general welfare of all its citizens, and it has power to adopt and enforce ordinances to accomplish such purposes;

City Ordinance Requiring Carriers to Maintain Separate Facilities

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JACKSON, MISSISSIPPI:

SECTION 1. That all common carriers of persons which have heretofore provided and maintained separate waiting rooms, rest rooms and like accommodations and facilities be and they are hereby required to continue to maintain similar but separate waiting rooms, rest rooms and like accommodations and facilities for the White and for the Colored races, and to appropriately designate one of the said waiting rooms, rest rooms accommodations and facilities for use by persons of the White race only, and the other for use of persons of the Colored races only.

SECTION 2. That it shall be unlawful for any person of the White race to use as such the said accommodations so thus provided for use by persons of the Colored races only.

SECTION 3. That it shall be unlawful for any person of the Colored races to use as such the said accommodations so thus provided for use by persons of the White race only.

SECTION 4. That any person convicted of a violation of this ordinance shall be guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars ($25.00), nor more than one-hundred dollars ($100.00), or by imprisonment in the City Jail not to exceed thirty (30) days, or by both such fine and imprisonment.

SECTION 5. It having been found by the Council of the said City of Jackson, Mississippi, that in the preservation of good order and peace of the municipality, and in the promotion of the general welfare of its citizens, it is necessary for this ordinance to become immediately effective,

and the same having been adopted by the unanimous vote of all the members of the governing body of said city, it is further ordained that this ordinance shall be and become effective immediately.

APPROVED:

Allen C. Thompson, Mayor
C. W. Alexander, Commissioner
D. L. Luckey, Commissioner

ATTEST:

Mrs. J. R. Skinner
City Clerk

(SEAL)

I, Mrs. J. R. Skinner, the duly appointed, qualified and acting City Clerk and lawful custodian of the minutes of the Council and seal of said city, certify that the foregoing is a true and exact copy of an Ordinance passed by the City Council at its regular meeting on January 12, 1956, and recorded in Minute Book "FF", page 149.

WITNESS my signature and official seal of office, this 12th day of January, 1956.

(SEAL)

Mrs. J. R. Skinner,
City Clerk

APPENDIX III

Opinion in *Rogers* Case

March 2, 1964.

IN THE

SUPREME COURT OF MISSISSIPPI

No. 42,722

JOHN LEE COPELAND,

vs.

STATE OF MISSISSIPPI.

RODGERS, *Justice*:

(Not to be Reported in State Reports)

This case is affirmed on the authority of *Thomas* v. *State*, No. 42,987, rendered February 17, 1964, and *Farmer* v. *State*, No. 42,983, this day decided.

AFFIRMED.

ALL JUSTICES CONCUR.

Note:

Opinions in substantially the same language as above were rendered in the *Ackerberg, Aelony, Anderson, Bevel, Donald, Filner, Nixon, Randolph, Reed, Harbour, Perlman, Myers, Peterson, Morton, Patton, Muse, O'Connor, K. Pleune, Davidov, Roland, McDonald,* and *J. Pleune* cases on March 2, 1964, and in the *Adler, Bromberg,* and *McKinnie* cases on March 9, 1964.

Judgment of Mississippi Supreme Court in *Thomas* Case

Monday, February 17th, 1964, Court Sitting:

No. 42,987

HENRY J. THOMAS,

vs.

STATE.

This cause having been submitted at a former day of this term on the record herein from the Circuit Court of Hinds County, First District, and this Court having sufficiently examined and considered the same and being of the opinion that there is no error therein—doth order and adjudge that the judgment of said Circuit Court rendered in this cause on November 14th, 1962 a conviction of breach of the peace and a sentence to pay a fine of $200.00 and serve 4 months in jail be and the same is hereby affirmed. It is further ordered and adjudged that the State of Mississippi do have and recover of and from Henry J. Thomas all of the cost of this appeal to be taxed for which let proper process issue.

Note:

Judgments in the other 28 cases were in substantially the same language as above; they merely reflect different lower court judgment dates, different words used to impose the same sentence, etc. Judgments were entered in the *Morton, Anderson, Aelony, Harbour, Copeland, Davidov, Filner,*

UNITED CHURCH OF CHRIST V. FEDERAL COMMUNICATIONS COMMISSION - CASE, MEM

Please Retain Original Order

BRIEF FOR APPELLANTS

IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA CIRCUIT

No. 19,409

OFFICE OF COMMUNICATION OF THE UNITED CHURCH OF CHRIST, AARON HENRY, ROBERT L. T. SMITH, and UNITED CHURCH OF CHRIST at TOUGALOO,

Appellants,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee,

LAMAR LIFE BROADCASTING COMPANY,

Intervener.

APPEAL FROM ORDER OF FEDERAL COMMUNICATIONS COMMISSION

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Statement of Questions Presented

The questions presented by this appeal (amplified from the prehearing stipulation) are as follows:

I. In ruling on appellants' objections to the renewal of a television license, did the Commission err in its determination that appellants were not parties in interest, as responsible representatives of groups in the community who were the victims of racial discrimination and other improper practices by the station?

II. Did the renewal of intervener's license affect substantial rights of the appellants, as representatives of the viewing public, and as victims of discriminatory policies?

III. Did the Commission violate the Communications Act and its own regulations, or abuse its discretion, in refusing to designate intervener's license renewal application for hearing, and in leaving substantial issues unresolved as to the licensee's conformance with the public interest standards of the Act?

IV. Did the Commission's Memorandum Opinion dispose of all substantial issues raised by appellants?

In other words, this Court is asked to decide (a) whether representatives of a substantial minority have standing in license renewal proceedings to protest against racially discriminatory programming, and (b) whether the Commission can renew a license in the face of documented charges of such racially discriminatory policies and other improper practices, without a hearing on the issues.

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BRIEF FOR APPELLANTS

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No. 19,409

OFFICE OF COMMUNICATION OF THE UNITED CHURCH OF CHRIST, AARON HENRY, ROBERT L. T. SMITH, and UNITED CHURCH OF CHRIST at Tougaloo,

Appellants,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee,

LAMAR LIFE BROADCASTING COMPANY,

Intervener.

Jurisdictional Statement

This case is before the Court upon appeal by the Office of Communication of the United Church of Christ, Aaron Henry, Robert L. T. Smith, and the United Church of Christ at Tougaloo, herein called appellants, pursuant to Section 402(b)(6) of the Communications Act of 1934, as amended (47 U.S.C. 402(b)(6)), and Section 10 of the Administrative Procedure Act (64 Stat. 243, 5 U.S.C. § 1009), for review of a Memorandum Opinion and Order of the Federal Communications Commission, herein called appellee or Commission, released May 20, 1965.

In the Order appealed from, the Commission granted renewal, for a one-year period, of a license to operate a television station, on the application of Lamar Life Broadcasting Company (herein called Intervener, or WLBT). The Order also dismissed appellants' petition for intervention and to deny the renewal application, and refused to designate the renewal application for public hearing.

The names of the parties are as set forth in the caption.

Statement of Case

The Commission's Jurisdiction on License Renewals

The jurisdiction of the Federal Communications Commission to license television broadcasting stations is established in the Federal Communications Act of 1934, as amended, Title III, Part I. The Act specifies that both the original grant and the renewal of a license must be founded on proof that the public interest will be served thereby.

The framework for consideration of the facts presented to the Commission is best set forth in the third paragraph of the Dissenting Statement of Chairman Henry and Commissioner Cox, which reads (1291):

> "The Communications Act specifies that a broadcast license is to be granted for a term of not more than three years and that the licensee shall then apply for a renewal of license. It enjoins the Commission to grant such renewal only if it can point to facts which clearly demonstrate that the public interest will be served thereby. The Act makes it clear that the Commission is to hold a hearing to resolve any substantial and material issues of fact bearing upon the question of whether a grant of renewal would serve the public interest. See 47 U.S.C. 307, 309."

Proceedings Before the Commission

On March 3, 1964 Lamar Life Broadcasting Company applied to the Commission for renewal of its license to operate television station WLBT in Jackson, Mississippi. The appellants filed petitions to intervene in the proceeding and asked the Commission to deny the renewal and to hold a hearing to determine whether WLBT had contravened the Federal Communications Act during prior licensing periods by failing to serve the public interest, convenience and necessity in the operation of the station.

Appellant, the Office of Communication of the United Church of Christ, is a national instrumentality of the United Church of Christ, charged by the Church's constitution with carrying on the denomination's ministry in television, radio and other forms of mass communication (Petn., p. 1).* The United Church of Christ is a national denomination formed in 1957 by union of the Congregational Christian Churches and the Evangelical and Reformed Church. It has more than two million members, with churches in every State except Alaska (872). Its affiliates in the WLBT primary service area include the United Church of Christ at Tougaloo, Mississippi (a Jackson suburb), and Tougaloo Southern Christian College. Church and college both were founded in 1869. Both are integrated (871-84).

Appellants Aaron Henry and Robert L. T. Smith are leaders in the civil rights movement in Mississippi. Dr. Henry is president of the Mississippi NAACP and has served as an officer of the Mississippi Freedom Democratic Party, a political party in the State of Mississippi (903). The Rev. Mr. Smith has also been a leader in the Freedom

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* The Petition was omitted from the Commission's record and "Index of Record" by mischance, but is expected to be filed as a supplement. Consequently, references to the Petition will be set forth as Petn., p , and references to the remainder of the record will be by page number.

Democratic Party, which permits participation by Negroes. Both Dr. Henry and Mr. Smith have been candidates for public office in the State of Mississippi, and have had a number of controversies with Station WLBT over allotment of time to present their views (1014-16). One lives within the prime service area of the station. Both own television sets (Petn., p. 2).

Appellant United Church of Christ at Tougaloo is a congregation of the United Church of Christ, but is autonomous in the management of its own affairs, as are all local churches of the denomination (860-61).

The original Petition filed by the first three named appellants alleged that WLBT discriminated against Negroes: in its presentation of news and announcements and in selection of program material; in its presentation of controversial issues, especially in the field of race; in its failure to publicize Negro community affairs; in its failure to use Negro entertainers and other participants in locally originated programs; in its failure to use courtesy titles for Negroes; and in its failure to represent Negroes in the presentation of religious programming (Petn., pp. 2-5). The Petition also alleged that excessive time was devoted to commercial announcements, and that the station failed to provide the community, Negro and white, with adequate religious and public affairs programming (Petn., pp. 2-3). A one-week monitoring study made by appellants furnished support for these allegations.

A tape recording was also made of the audio portion of the programs during the entire week covered by the monitoring, and a summary of the programming for the week was attached (Petn., pp. 2, 3 and Exh. A). Appellants offered to make the monitoring study and the tape recording available to the Commission at any hearing (Petn., p. 3, par. 7).

WLBT filed an Opposition to the Petition, which contested appellants' standing and alleged a lack of specificity

in the original Petition (669 ff.). The bulk of the Opposition, however, was devoted to answers on the merits.

The last-named appellant, United Church of Christ at Tougaloo, then moved to join in the Petition (860-61), and appellants filed a Reply to the WLBT Opposition, which attached numerous documents furnishing evidentiary detail, supporting the allegations of the Petition, and giving specific examples of the practices revealed by the monitoring study, as well as analysis of that study (870-1053).

WLBT then filed a detailed and lengthy Response to the Reply (1175 ff.).

All of this material was considered by the Commission, which refers in its Memorandum Opinion and Order to material in appellants' Reply as well as the Petition (e.g., 1273, n. 2, 1280, n. 10). Accordingly, the word "Petition" as used in this brief includes both the original Petition and the Reply.

No hearing was held on the issues raised by the foregoing pleadings. The Commission did not request the results of the appellants' monitoring study or tape recording; however, these were analyzed to some extent in appellants' Petition and Reply.

The Opinion and Order of the Commission

On May 20, 1965, the Commission released its Opinion and Order on the various proceedings (1273 ff.). The Order granted a one-year renewal of license, conditioned upon corrective action by the licensee, including the immediate discontinuance of "discriminatory programming patterns." (1287) The Commission held that appellants had no standing in the proceeding (1281). Accordingly, the Petition was dismissed (1290).

The Commission's Opinion and Order also related to an application for a renewal of license of radio station WJDX (1289), which is not involved in this appeal.

The extent to which the Commission disregarded substantial issues of material fact, in renewing the license without a hearing, is incisively described in the Dissenting Statement of Chairman Henry and Commissioner Cox (1291):

> "This is a case of unusual importance. Members of the public and citizens of the local community, acting in reliance on provisions of the Communications Act[1] and the Commission's pronouncements,[2] have filed petitions to deny the renewal application of a local television station. These petitions contain most serious allegations which, if true, would indicate that the station has made misrepresentations to the Commission, deceived the public, violated Commission policy, broken federal and state laws, and ignored the needs of a substantial portion of the community it has pledged to serve. The Commission, in my opinion, should resolve these important issues in an evidentiary hearing. The licensee is entitled to such a hearing as a matter of right on the question of license renewal; to deny the same right to complaining members of the public is, in this instance, a clear abuse of discretion.
>
> "The case also represents the first Commission consideration of a possible long continuing pattern, over two or more license periods, of failure to comply with the Fairness Doctrine.[3] Moreover, it represents the first Commission consideration of a possible long continuing pattern of public deception as a means of censoring programs the licensee did not wish to present. But the plain fact is that aside from such

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[1] 47 U.S.C. 309, 311.

[2] Report and Statement of Policy re: Commission *En Banc* Programming Inquiry, 20 Pike and Fischer, R. R. 1901 (1960).

[3] Report on Editorializing by Broadcast Licensees, 13 F.C.C. 1246 (1949).

novel questions, the case is important because it involves the integrity of the public interest standard and the Commission's renewal processes."

Unresolved Fact Problems

In disposing of the matter without a hearing, the Commission left many unresolved questions, concerning the Intervener's compliance with the Commission's long-standing Fairness Doctrine, concerning the extent to which the Intervener may have misrepresented its policy in previous applications to the Commission, and concerning other factual issues with respect to racial discrimination in programming and broadcasting.

Some of these issues are outlined below.

1. The Intervener's Failure to Comply With the Fairness Doctrine.

The Commission has repeatedly announced the rule that "the licensee has an affirmative obligation to afford reasonable opportunity for the presentation of contrasting viewpoints on any controversial issue which he chooses to cover." This is the substance of the Fairness Doctrine, first announced in the Commission's opinion of June 1, 1949 in Docket No. 8516, and summarized in the above words in Public Notice—B of July 26, 1963 (FCC 63-734-38372).

The Fairness Doctrine has been supplemented by the following definition of a licensee's obligations:

> "the principal ingredient of the licensee's obligation to operate his station in the public interest is the diligent, positive, and continuing effort by the licensee to discover and fulfill the tastes, needs, and desires of his community or service area, for broadcast service."

(FCC 60-970, Network Programming Inquiry, Report and Statement of Policy, July 29, 1960—Federal Register, August 3, 1960, pp. 7291, 7295.)

The Fairness Doctrine, which the Commission requires all television and radio stations to apply in dealing with controversy, places the responsibility on the station to provide a person (or organization), *in advance,* with a copy of the script when he is to be attacked or criticized on the air by persons using the facilities of the station, together with an offer of equal time for reply. No interdict is placed on the airing of controversial views. The Doctrine provides a method whereby each side in a controversial issue may have time on the station to air its views.

The Memorandum Opinion of the Commission sets forth some of the difficulties the Commission has had in acquainting WLBT with the Fairness Doctrine. The Commission also refers to some of the theories and distinctions concerning application of the Doctrine that WLBT has adduced whenever it was called to account. For example, WLBT told the Commission that:

a) It did not know that the Fairness Doctrine applied to statements by public officials (1275).

b) WLBT had a policy of avoiding discussion of civil rights, and therefore need not permit advocates of integration to express their views (1275).

c) WLBT did not know that the Fairness Doctrine applied to paid announcements (1277).

d) The station looked upon editorials dealing with racial integration as a discussion of states' rights, and therefore saw no requirement to include advocates of integration in such a discussion or to give such advocates the right to reply (1278).

e) The station thought local programming favoring the segregationist viewpoint on *local* issues was balanced

adequately when WLBT broadcast network programming on *national* civil rights issues (1278-79).

f) It thought the Fairness Doctrine did not apply to personal attacks on others made by candidates for public office (1280, n. 10).

As far back as 1955, the staff of the Commission was explaining the Fairness Doctrine to WLBT. It cannot be seriously argued that WLBT complied with the Fairness Doctrine in the nine years preceding the filing of appellants' Petition. In fact, WLBT has often broadcast blatantly emotional appeals to white racial and sectional sentiment, and has done so at times of heightened racial tension when such appeals could only inflame hostility and lead to violence. The editorials delivered personally by WLBT's general manager urging resistance to the admission of James Meredith to the University of Mississippi (1276-77) were followed by serious rioting at the University, and may well have played a part in causing the attacks on Federal marshals and the death and injuries that ensued. There is no claim that any opportunity was given to reply to these editorials.

The Dissenting Statement of Chairman Henry and Commissioner Cox quoted from five such editorials telecast in September 1962, a typical quotation being that "Mississippi is fortunate in having men at its leadership who have vowed to prevent integration of our schools" (1294, 24). This opinion was broadcast eight years after the Supreme Court's decision in *Brown* v. *Board of Education,* 347 U. S. 483 (1954). In commenting on these editorials, the dissenters stated (1294):

> "The question is not the licensee's right to present such programming, or to editorialize; it, of course, has the full right to do so. The question rather is how the presentation of such programming can be squared with the good faith of a long-continuing rep-

resentation (first made in defense to a complaint of the NAACP) that the stations do not present local programming dealing with segregation."

2. Discriminatory Treatment of News and Special Events.

Negroes represent forty (40) per cent of the population of Hinds County, in which WLBT is located, and almost forty-five (45) per cent of the total population of the five counties within the prime service area of the station. A majority of such Negroes own or have access to a television set (Petn., p. 2). Yet, the Petition showed, WLBT has failed to cover the activities of the Negro community—which is segregated at all levels. In its news programming, and in matters involving race relations and civil rights, WLBT has failed to give a fair presentation of the issues to its viewing audience (Petn., pp. 2-3). Local news programs have featured attempts of local and Mississippi State officials to block integration—in schools, voter registration, etc.—but have not included reporting of Negro attempts to break down segregation or any fair presentation of Negro views or grievances. *Commission Memorandum Opinion,* par. 20 and note 8 (1284, 1279).

It is customary for WLBT, as a public service, to broadcast spot announcements about the plans and activities of social, political, cultural, educational, medical and similar organizations within its service area. Most of these institutions are segregated (879). According to an analysis made by the appellants and not refuted by WLBT, the station during the three years of its latest license period made announcements in behalf of 233 identifiable segregated organizations, of which 3 were Negro and 230 were white (880). The station also refused to make announcements in behalf of the NAACP and to announce cultural events at Tougaloo College of interest to the entire community, Negro and white (1005, 1020).

3. Discriminatory Treatment of Public Affairs and Educational Programming.

The Petition alleged that WLBT devoted less than ten per cent of its total time on the air to programs dealing with public affairs, information, education and religion, and to the broadcasting of public service announcements (Petn., p. 3). No locally originated documentary or discussion programs were scheduled dealing with race or civil rights issues, nor were there any educational programs about race (Petn., p. 4).

The principal recognition which WLBT has given to the functioning of education in the Negro community has been through occasional participation on the weekly program, "Our Colleges." Representation of the Negro institutions has been solely through presentation of sports, bands, glee clubs and other musical organizations and similar programming of an entertainment nature (884). Lectures by faculty members, discussions and debates by students and faculty, and similar intellectual fare common to television programs representing higher education elsewhere, as well as controversial issues, have been excluded from these programs.

4. Discriminatory Practices in Entertainment Programs.

The Petition alleges that WLBT discriminates against Negroes in local entertainment programming (Petn., p. 4). More than two-thirds of the station's program time is devoted to entertainment (Exh. A to Petn.), but no Negro entertainer, singer or orchestra has been included in this programming, except on a few network-originated shows. One example of this discrimination in entertainment programs is a weekly one-hour popular dance program called "Teen Tempos". Teen-age couples dance before the cameras on this program. Some 19,000 teenagers have participated since the inception of the program. No Negro has ever appeared on the program (885).

WLBT also has a participation program for small children called "Romper Room" on which no Negro child has appeared (885).

WLBT claims that a program somewhat similar to "Teen Tempos", but limited exclusively to Negroes, is being broadcast on a regular basis. However, it appears that WBLT is referring to one fifteen-minute program in April, 1964, featuring youngsters from the all-Negro Farish Street YMCA. This program was substituted on that date only for the usual turn of a Negro college on the "Our Colleges" program (885 n.).

5. Racial Discrimination in Religious Programming.

Most of the Protestant Churches in the WLBT service area are segregated. About half of the churches and church members in the area are Negro (882).

Prior to the filing of the Petition, WLBT broadcast no locally originated programs in behalf of Roman Catholics. It carried and continues to carry several hours of religious services from white Protestant churches on Sundays (882). On week days it telecasts a Mid-day Devotional Program on which participants are assigned by the Jackson Ministerial Council, which includes no Negroes (882). No time is allotted to Negroes, despite requests by Negro ministers that they be included in the week-day program and granted Sunday scheduling (1021, Attachment F, # 6, to Reply).

The only regular "religious" programming afforded the Negro community is one fifteen-minute segment at 6:45 on Sunday morning sold to a Rev. Nathan Wheeler (882). This program is mostly "gospel singing" and "might more accurately be described as entertainment," according to the appellants. The Rev. Wendell P. Taylor, minister of the largest Negro Methodist Church in Jackson and holder of B.S. and M.A. degrees from Columbia University, describes the Rev. Mr. Wheeler as "uneducated" and states

that he does not represent any of the denominations with churches in Jackson (981, p. 2 of Attachment D, Exh. 1, to the Reply).

It is not claimed that any regular programming was ever presented from or offered to any of the major Negro churches in the area, including the United Church of Christ at Tougaloo.

Statutes Involved

Communications Act (Title 47, U. S. Code):

"§ 307. Licenses; allocation of facilities; terms; renewals

"(a) The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this chapter, shall grant to any applicant therefor a station license provided for by this chapter.

* * *

"(d) No license granted for the operation of a broadcasting station shall be for a longer term than three years and no license so granted for any other class of station shall be for a longer term than five years, and any license granted may be revoked as hereinafter provided. Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed three years in the case of broadcasting licenses, and not to exceed five years in the case of other licenses, if the Commission finds that public interest, convenience, and necessity would be served thereby.

"§ 308. Same; application; conditions and restrictions in license for foreign communication

"(a) The Commission may grant construction permits and station licenses, or modifications or renewal

thereof, only upon written application therefor received by it: * * *

"§ 309. Application for license—Considerations in granting application

"(a) Subject to the provisions of this section, the Commission shall determine, in the case of each application filed with it to which section 308 of this title applies, whether the public interest, convenience, and necessity will be served by the granting of such application, and, if the Commission, upon examination of such application and upon consideration of such other matters as the Commission may officially notice, shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.

"(b) Except as provided in subsection (c) of this section, no such application—

(1) for an instrument of authorization in the case of a station in the broadcasting or common carrier services, * * *

shall be granted by the Commission earlier than thirty days following issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof.

* * *

"Petition to deny application; time; contents; reply; findings

"(d) (1) Any party in interest may file with the Commission a petition to deny any application (whether as originally filed or as amended) to which subsection (b) of this section applies at any time prior to the day of Commission grant thereof without hearing or the day of formal designation thereof for hearing; * * *

"(2) If the Commission finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact and that a grant of the application would be consistent with subsection (a) of this section, it shall make the grant, deny the petition, and issue a concise statement of the reasons for denying the petition, which statement shall dispose of all substantial issues raised by the petition. If a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be consistent with subsection (a) of this section, it shall proceed as provided in subsection (e) of this section.

"(e) If, in the case of any application to which subsection (a) of this section applies, a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding specified in such subsection, it shall formally designate the application for hearing on the ground or reasons then obtaining and shall forthwith notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally.

"§ 402. Judicial review of Commission's orders and decisions—Procedure

"(b) Appeals may be taken from decisions and orders of the Commission to the United States Court of Appeals for the District of Columbia in any of the following cases:

* * *

"(2) By any applicant for the renewal or modification of any such instrument of authorization whose application is denied by the Commission.

* * *

"(6) By any other person who is aggrieved or whose interests are adversely affected by any order of the Commission granting or denying any application described in paragraphs (1)-(4) of this subsection.

* * *

"(c) Such appeal shall be taken by filing a notice of appeal with the court within thirty days from the date upon which public notice is given of the decision or order complained of. Such notice of appeal shall contain a concise statement of the nature of the proceedings as to which the appeal is taken; a concise statement of the reasons on which the appellant intends to rely, separately stated and numbered; and proof of service of a true copy of said notice and statement upon the Commission. Upon filing of such notice, the court shall have jurisdiction of the proceedings and of the questions determined therein and shall have power, by order, directed to the Commission or any other party to the appeal, to grant such temporary relief as it may deem just and proper."

Statement of Points

I. Appellants had standing before the Commission and before this Court as television viewers and as representatives of groups of television viewers.

(See reasons 1(a) to 1(f) in Notice of Appeal.)

II. The Commission's order affects substantial rights of appellants.

(See reason 1(g) in Notice of Appeal.)

III. The Commission erred in failing to designate the application for hearing.

(See reasons 2, 3, 4 and 5 in Notice of Appeal.)

IV. The Commission's opinion does not dispose of all substantial issues.

(See reason 6 in Notice of Appeal.)

Summary of Argument

I. Appellants had standing before the Commission and before this Court as representatives of substantial groups of television viewers.

As representatives of a class of television viewers who were the victims of racially discriminatory policies, appellants were entitled to standing as a "party in interest" before the Commission and equally entitled to standing before this Court as a "person aggrieved or whose interests are adversely affected" by the order appealed from.

Customers and consumers have generally been recognized as parties in interest or persons affected by an administrative order regulating a public utility. Groups of viewers are best qualified to represent the public interest in connection with granting or renewal of a license for a television station.

The argument of administrative inconvenience does not justify denying status to these appellants; nor would the recognition of their standing open the door to capricious or insubstantial objections in the future. Appellants' objections to the license renewal were based on a monitoring study covering an entire week's telecasting, and on detailed statements and exhibits.

Exclusion of almost half the community from effective service, by a programming policy which discriminates against Negroes, is inconsistent with the public interest which must be served by a Federal licensee of the air waves.

II. The Commission order affects substantial rights of the appellants.

A television licensee acts under Federal grant of power to use the limited air waves that exist. Denial of opportunity for appellants to answer criticisms against indivi-

viduals or against the Negro race, constitutes a deprivation of their civil rights, which a Federal agency should not sanction. The investment of television viewers in the aggregate exceeds the investments of television broadcasters, and is entitled to representation before the Commission.

Not only as representatives of the viewing public, but as representatives of a class who have not been given fair recognition in programming, appellants are entitled to protection against discrimination on racial grounds.

III. The Commission was under a statutory duty to designate the application for a full public hearing.

A renewal application must meet the same standards of public interest, convenience and necessity as an original application for a license. The statute mandates a hearing before the renewal of a license whenever material issues of fact exist.

Both the majority and minority of the Commission expressly recognized that appellants' Petition raised substantial issues of material fact. The majority opinion six times recites the existence of such issues.

This Court requires an adequate statement of reasons for the issuance of a license, but the Commission has failed to give such reasons.

The past history of disregard of public interest standards by the licensee emphasizes that even a probationary renewal should not have been granted without a hearing on the issues.

IV. The Commission's opinion does not dispose of all substantial issues.

Appellants showed from their monitoring study of the station that on many occasions intervener used a greater

portion of time for commercials than was represented in its last application for a renewal license.

The license should not have been renewed without determination of this and the racial discrimination issues.

ARGUMENT

POINT I

Appellants had standing before the Commission and before this Court as representatives of groups of television viewers who had been consistently discriminated against by a licensee.

The Commission held that appellants did not show sufficient "injury of a tangible and substantial nature" to have standing (1281, n. 11). Although the objections raised by appellants were considered in this proceeding, as a matter of grace, and as supplements to the Commission's own consideration of public interest, the question of standing is still important. The Supreme Court pointed out in *Federal Communications Comm.* v. *National Broadcasting Company, Inc.*, 319 U. S. 239, 246 (1943), that permission from the Commission to file a brief *amicus curiae* did not prevent review of a party's right of intervention. The question of standing in this case not only affects appellants' right of appeal, but also determines the legal validity of objections which appellants or others may wish to make in connection with renewal applications of other radio and television stations that practice racial discrimination in their programming policies.

Ths Court has held that standing to intervene as a "party in interest" in license applications under § 309 of the Communications Act and standing to appeal to this Court as a "person aggrieved or whose interests are adversely affected" under § 402(b)(6) of the Act present identical questions. *Philco Corp.* v. *Federal Communica-*

tions Comm., 257 F. 2d 656, 103 App. D. C. 278 (D. C. Cir. 1958), cert. den. 358 U. S. 946 (1959).

This Court has also held that a customer or consumer is "affected" by an administrative order regulating a public utility. *Bebchick* v. *Public Utilities Comm.*, 109 App. D. C. 298, 287 F. 2d 337 (D. C. Cir. 1961). In *United States* v. *Public Utilities Commission*, 80 App. D. C. 227, 151 F. 2d 609 (D. C. Cir. 1945), this Court stated (p. 613):

> ". . . Giving to the words quoted the meaning commonly attributed to them, and assuming that Congress intended to use them in their ordinary and usual sense, there can be no question that a consumer of Potomac is a person or corporation affected by the Commission's order."

The Supreme Court itself has repeatedly held that customers of public utilities are "aggrieved" by and have standing to challenge discriminatory practices. *Henderson* v. *United States*, 339 U. S. 816, 823 (1950); *Mitchell* v. *United States*, 313 U. S. 80, 92-93 (1941).

Nor has the rule been limited to public utilities. In *Reade* v. *Ewing*, 205 F. 2d 630 (2d Cir. 1953), it was recognized that consumers of oleomargarine have standing as persons "affected" by orders regarding the ingredients of oleomargarine. In *Associated Industries of New York State, Inc.* v. *Ickes*, 134 F. 2d 694 (2nd Cir. 1943) (which contains one of the most detailed and thoughtful discussions of standing in any judicial opinion), an association of coal consumers was held to have standing to review a minimum price order. Both these cases were cited and relied on by this Court in the *Philco* case (257 F. 2d at 659).

Nothing in the language of the Communications Act suggests any reason for a more restrictive rule governing proceedings before the Federal Communications Commis-

sion. Indeed, the language of Section 402(b)(6) suggests a broad grant of standing. Most regulatory statutes use one or another of the terms "persons aggrieved" or "persons affected". The latter apparently is broader in meaning. See *United States* v. *Public Utility Commission,* cited above. In the Communications Act, Congress authorizes appeals if either test is met. Section 402(b)(6).

Broadcasting poses a situation where the term "party in interest" should be even more broadly construed than in connection with other regulatory statutes. For instance, where a railroad or motor carrier seeks to raise its rates, shippers have a direct economic interest and unquestioned standing to oppose the carrier before the Interstate Commerce Commission. The public interest is protected by the inter-play between the carrier and the shipper. In hearings on a radio or television broadcast license, in contrast, there is normally no one to speak in behalf of the public interest. The applicant, in his papers seeking the issuance or renewal of a license, is required to report on his plans and his actual programming, but may give his own interpretation of the percentage he has carried of entertainment, news, religious, agricultural and other public interest programs. Unless representatives of the listening or viewing public, who are in a real sense the consumers of the licensee's product, are recognized as "parties in interest" or persons "affected", there is no likelihood of an adversary procedure under which the public interest can be protected.

The primary concern with service to the community was emphasized by the Supreme Court in *Federal Communications Comm.* v. *Sanders Brothers Radio Station,* 309 U. S. 470, 475 (1940), where the Court stated:

> "An important element of public interest and convenience affecting the issue of a license is the ability of the licensee to render the best practicable service to the community reached by his broadcasts."

In *Scripps-Howard, Inc.* v. *Federal Communications Comm.*, 316 U. S. 4, 14 (1942), the Supreme Court stated that "private litigants have standing only as representatives of the public interest". Where approximately half of a community has not been served by a licensee, it should be clear that a representative of the community is a "party in interest" in determining whether a renewal of the license is justified.

Notwithstanding the well-established rule that customers and consumers have standing, the Federal Communications Commission has repeatedly held that members of a station's audience do not have standing before the Commission. See, *e.g.*, *Capital Broadcasting Co.*, 8 R.R. 229 (1952).

If the Commission's limitations on standing were rigorously enforced, the anomalous result would be reached that only persons having selfish economic interests would be permitted to present evidence bearing on the question of public interest which must govern the Commission's actions on license applications. No one with primarily public motives could be heard. This would leave the public interest inadequately protected in the great majority of proceedings where there are no competing commercial enterprises to act as "private Attorney Generals". See, *Associated Industries* v. *Ickes*, 134 F. 2d 694, 704.

The Commission's small staff cannot, in all cases, be fully informed on considerations affecting the public interest. As the Commission itself has stated:

> "For the Commission to take the initiative to seek out the detail of the public interest in broadcast service in hundreds of individual communities across the land would not only be contrary to the republican principle on which our system is based, but would also be enormously complex and prohibitively expensive. This most important job must be done by broadcasters informed by a cooperative and willing public. Nor need

members of the public feel that, in pressing their needs and preferences on local broadcasters or networks, they are interfering in business affairs in which they have no direct and legitimate interest." (H. Rept. 281, 88th Cong. 1st Sess.)

Accordingly, the Commission has adopted a policy of considering allegations by petitioners, irrespective of their standing, whenever it appears that such allegations may be relevant to its duty to grant licenses in the public interest. *Great Western Broadcasting Corp.*, 25 R.R. 480 (1963). But this is scarcely a satisfactory solution for the television viewer or radio listener. No matter how meritorious his case, he would be unable to present evidence unless the Commission wished to hear it, and he could not appeal from any decision, however arbitrary. His adversary, the licensee, has an absolute right to a hearing and to appeal from adverse determinations. This unequal contest does not invite public participation.

The licensee's Response to appellant's Reply asserts that Congress did not intend "party in interest" to confer standing "indiscriminately", or on persons without a "legitimate" interest (1177). No case that is cited, however, involves a situation comparable to the present, and none holds that responsible representatives of half of a community, which has suffered from discriminatory programming, are to be denied rightful participation in a license proceeding.

Fears of Administrative Difficulty Are Groundless

Apparently, the Commission's rule on standing is based on notions of administrative convenience. See, *e.g.*, *Good Music Station, Inc.*, 15 R.R. 23, 25 (1957), where it stated:

"It is clear that Congress intended to insure that the judicial and administrative process be unencumbered by a requirement that every member of a

listening public who feels himself aggrieved by Commission action be accorded the status of a party in interest."

But no reason appears why it should be less convenient to hear television viewers than to hear bus passengers or oleomargarine consumers. As a matter of fact, the Communications Act protects the Commission from interference by irresponsible persons, by requiring that a petition to deny license renewal "contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with . . . [the public interest, convenience and necessity]" and by permitting the Commission to deny the petition if "there are no substantial and material questions of fact." The Act also requires that "allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof" (Section 309(d)(1)).

To recognize the legitimate interest of viewers in programming will not make it necessary to permit intervention on the basis of insubstantial or irrelevant charges or on the basis of rumor or speculation.

The original Petition in this case included specific charges supported by a careful monitoring study of WLBT's entire programming for a full week. Petitioners' Reply to WLBT's Opposition contained numerous detailed statements by viewers in the service area giving instances of unfair and discriminatory practices at other times (894-1053).

The notion that a court or administrative agency should not follow the course which justice requires, for fear that it will be unable to distinguish the precedent in another case where justice does not require the same result, is a timorous and unsound basis of decision. Yet that is the essence of the argument based on administrative con-

venience, that fears of future unfounded objections should prevent recognizing these appellants' rights to present carefully documented and well-founded objections. The work and effort that went into monitoring the station, and gathering affidavits of fact, show that a grant of standing here would not require recognition of every casual individual who might ask to have his appearance noted.

Not every television viewer would take the trouble to recruit and instruct monitors in a system of program categories and to monitor a station for an entire week. Not every television viewer would assemble 25 affidavits and hundreds of pages of exhibits, or win the support of several hundred others in the community through letters and communications to the Commission. Even if many did so, their findings would not entitle them to a hearing unless the methods used withstood critical scrutiny and the results achieved raised "substantial" issues.

The argument of administrative inconvenience in permitting television viewers to advance public interest arguments has no real application where the petition is filed on behalf of a substantial group, as is true in this case. The petition here shows a pattern of discrimination, which has damaged the interests of almost half the television viewers in the community. Affidavits and letters from twenty-five different people, many of them representatives of interested organizations, were attached to the Reply to the Opposition (894-1052). Additional letters, postcards and petitions from other citizens, in support of appellants' position, occupy an entire volume of the Record (1310-1618).

The Courts and administrative agencies have not hesitated to grant standing to very large groups of persons where large groups have been affected. For example, bus riders (*Bebchick, supra*), consumers of electric energy (*U. S.* v. *P. U. C., supra*), railroad passengers (*Mitchell, supra*), residents of a city (*Gomillion* v. *Lightfoot,* 364

U. S. 339 (1960)), and voters of a state (*Baker* v. *Carr*, 369 U. S. 186 (1962)). Where the group that is injured is large, it is appropriate that standing to protest the injury should be widely shared. A Court will go much farther to protect public rights than it will when only private interests are involved. See *Scripps-Howard Radio* v. *Federal Communications Comm.*, 316 U. S. 4, 15 (1942); Jaffe, *Standing to Secure Judicial Review: Private Actions*, 75 Harv. L. Rev. 255, 282, 294.

A Court will relax its rules to give standing to a person when no one else is available to assert the right. *Barrows* v. *Jackson*, 346 U. S. 249, 257 (1953); *Illinois Packing Co.* v. *Snyder*, 151 F. 2d 337, 338-39 (Emey Ct. App. 1945); *Parker* v. *Fleming*, 329 U. S. 531 (1946). It will not "foreclose judicial inquiry into serious breach of the First Amendment—even though no special monetary injury could be shown". *Abington School District* v. *Schempp*, 374 U. S. 203, 266 n. (1963) .

In the last analysis the rules as to standing are "designed principally to insure that the plaintiffs have 'such a personal stake in the outcome of the controversy as to assure the concrete adverseness which sharpens the presentation of issues * * *' ". *Abington* v. *Schempp*, 374 U. S. 203, 267 n. (1963). Differently stated, the limiting criterion on standing is "the intensity of the plaintiff's claim to justice". Jaffe, *op. cit. supra*, 75 Harv. L. Rev. at 304.

There can be little doubt in this case that the issues have been sharply drawn and vigorously presented, or that appellants' claim to justice possesses the requisite "intensity". The existence of a "case or controversy" is so open and notorious a fact as to stimulate hundreds of pages of communications to the Commission, many newspaper editorials, and even a resolution of the Mississippi Legislature (1001, Attachment E, Exh. 5, to Reply). The licensee has suggested that anything connected with Touga-

loo College is "controversial" and attempts have been made to revoke its charter (1003, Attachment E, Exh. 7). Reverend R. L. T. Smith was told that he could not appear at the WLBT facilities without risk "that my body would likely be found floating in the Pearl River" (1012). Are not these threats evidence that the rights claimed by appellant are substantial? Is not the Reverend Mr. Smith's willingness to risk his life evidence that he has a real grievance?

There is a statement in the Commission's Opinion that a grant of standing to these petitioners would necessarily require them to grant standing to any minority group "despite the lack of an individual substantive right to protect or a substantial and immediate interest in the matter protested" (1281, n. 11).

However, we think that this is too mechanical a concept of standing. In order to have standing a petitioner must make out a *prima facie* case of injury. (See pp. 20-23, *supra.*) Clearly, the injury is direct and substantial when almost one-half the population in an almost totally segregated community is subjected to discriminatory programming. It may be less direct and substantial when the minority is small or when it is not excluded from the institutions and organizations which participate in local programming. A grant of standing in this case will, therefore, not necessarily compel a grant of standing in any other case. It will merely serve notice that victims of substantial discrimination are "aggrieved" and have a right to be heard.

The Commission itself recognized the distinction in its opinion in the *WJTV* case, announced simultaneously with the opinion in this case. The conclusion of that opinion stated (p. 5):

> "There is no requirement that a licensee divide his programming so that, in Jackson for example, 55% would be of interest to the white community and 45%

to the Negro, any more than there is a requirement that each minority group (e.g., Irish, Jewish, Polish, etc.) be afforded a specified portion of a Chicago TV station's time, proportionate to the group's percentage of the total Chicago population. * * *

(p. 6):

But the applicant is incorrect in its assertion that the foregoing consideration is dispositive of the petitioners' contentions. A licensee's programming must be designed in good faith to serve his area. Thus, if a licensee had one rotating church program and never presented Negro churches even though they represented half the churches or population in the area, the obvious question is presented whether the licensee is seeking in good faith to serve his area's needs or simply following or acquiescing in a deliberate exclusionary pattern. The same consideration would be true in other programming areas. If, for example, a licensee never sought to ascertain or serve the needs of predominantly Negro colleges in his area—even though there were a large number of such colleges—the question is presented whether the licensee can be said to be 'equitably' and in good faith meeting his obligations under the public interest standard. See *Report and Statement on Policy Re: Commission's En Banc Programming Inquiry,* 20 Pike & Fischer, R. R. 1901."

The experience of other agencies and the requirements of Section 309 of the Communications Act make it clear that no serious inconvenience is likely to result from recognition of standing for television viewers. A similar argument in the *Associated Industries* case was decisively answered by the late Judge Frank:

"There are no such horrendous possibilities." (134 F. 2d at 707)

Associations of Consumers or Other Affected Persons Have Standing

It has long been recognized that an association whose members are "affected" or "aggrieved" by an administrative order may act on their behalf. An association of businesses, many of which were substantial coal consumers, was granted standing to attack a minimum price order, in *Associated Industries* v. *Ickes,* the Court expressly holding that the association was authorized to represent its members (134 F. 2d at 712-13).

This Court granted standing to "international and national unions" to represent their members living and working near the proposed site of an atomic reactor, and permitted them to argue that the reactor would endanger the health of their members and the value of their homes. *International Union of Electrical Workers* v. *United States,* 108 App. D. C. 97, 280 F. 2d 645 (1960), reversed on other grounds, 367 U. S. 396 (1961), the grant of certiorari having excluded the issue of standing from review, 364 U. S. 889 (1960).

A voluntary association also has standing to protect its own rights. *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U. S. 123, 140-1 (1951).

This Court should find that the appellants and the groups they represent, both Negroes, and white viewers who are concerned to eliminate discrimination in programming practices, were entitled to standing as of right before the Commission.

POINT II

The Commission order affects substantial rights of appellants.

In the first point of this brief we have dealt with the statutory language relating to appellants' standing. In this point we hope to show that, independent of the statute, the

rights of appellants as representatives of a major class of television viewers are so substantial that they require protection under established principles of constitutional law, in order to avoid impairment of their rights under the First, Fifth and Fourteenth Amendments of the United States Constitution.

It is well established that one may be a "party in interest" to a license application under the Communications Act even though the proceeding does not affect a legally-protected right. It is enough that the petitioner establish potential injury. *Federal Communications Comm.* v. *Sanders Brothers Radio Station,* 309 U. S. 470; *Philco Corp.* v. *Federal Communications Comm.,* 103 App. D. C. 278, 257 F. 2d 656 (1958). Cf. *Associated Industries* v. *Ickes,* 134 F. 2d 694, 704-05 (2d Cir. 1943).

However, standing would be clear in this case even under the more restrictive rules at common law because substantial legal rights of the petitioners are involved.

There can be little doubt that the actions of this licensee are Federal actions within the meaning of the freedom of speech provision of the First Amendment and the equal protection clause of the Fourteenth Amendment to the United States Constitution, whose substance is applicable to the Federal Government by virtue of the due process clause of the Fifth Amendment. *Bolling* v. *Sharpe,* 347 U. S. 497 (1954).

WLBT is one of the most important means of mass communication in Mississippi. By maintaining policies of racial discrimination, under Federal license, it can influence the whole temper of the state adversely. Not only is Jackson the State capital, and the largest city in Mississippi; intervener's station has the largest wattage of any television station in Mississippi. WLBT should have a responsibility commensurate with its influence.

The intervener is one of two persons authorized to broadcast television programs from Jackson, Mississippi. While it does not enjoy an absolute monopoly, it is permitted exclusive use of one of a limited number of channels which belong to the public. It is one of a restricted group of persons selected under Federal authority to enjoy this valuable privilege in return for its assumption of the obligation to act in the public interest. Its license continues during good behavior and is not renewable unless its operation continues to be conducted in the public interest. The Commission has the responsibility of interpreting and enforcing the public interest.

Conduct permitted by the Commission is constitutionally equivalent to conduct of the United States. *Pollak* v. *Public Utilities Commission*, 343 U. S. 451, 462 (1952); *Steele* v. *Louisville & Nashville R. R. Co.*, 223 U. S. 192, 198 (1944); Cf. *Baldwin* v. *Morgan*, 287 F. 2d 750, 754-5 (5th Cir. 1961).

The discriminatory programming of the intervener has repeatedly violated the rights which these petitioners have under the Fifth and Fourteenth Amendments to the Constitution to equal protection of law without regard to their race, color or national origin. WLBT as a Federal licensee has used the public channels to present a one-sided view of public issues. It has failed to permit expression of the views of civil rights advocates. The public channels should be compared with other public areas. The unreasonable exclusion of civil rights advocates from these channels has interfered with the freedom of expression guaranteed them by the First Amendment.

Furthermore, the licensee's conduct has violated rights of petitioners under the Communications Act and under the Commission's regulations and interpretations.

The Commission has consistently recognized "the necessity for licensees to devote a reasonable percentage of their broadcast time to the presentation of news and to the

consideration and discussion of public issues of interest in the community served by the particular station." *Report on Editorializing by Broadcast Licensees,* 13 FCC 1, 4 (1949). This duty includes the making of reasonable provision for the discussion of controversial issues of public importance in the community served, *United Broadcasting Co.* (*WHKC*), 10 FCC 675, and extends to all subjects of substantial importance to the community coming within the scope of free discussion without regard to the personal views and opinions of the licensees on the matter, or the possible unpopularity of the views to be expressed on the subject matter among particular elements of the listening audience. The *Scott case,* 3 R. R. 259.

The Commission has stated (Public Notice B of July 26, 1963—FCC 63-734-38372):

> "(a) When a controversial program involves a personal attack upon an individual or organization, the licensee must transmit the text of the broadcast to the person or group attacked, wherever located, either prior to or at the time of the broadcast, with a specific offer of his station's facilities for an adequate response (*Clayton W. Mapoles,* 23 Pike & Fischer, R. R. 586, 591; *Billing Broadcasting Company,* 23 Pike & Fischer, R. R. 951, 953).
>
> * * *
>
> (c) When a licensee permits the use of his facilities for the presentation of views regarding an issue of current importance such as racial segregation, integration, or discrimination, or any other issue of public importance, he must offer spokesmen for all responsible groups within the community similar opportunities for the expression of the viewpoint of their respective groups. In particular, the views of the leaders of the Negro and other community groups as to the issue of racial segregation, integration, or discrimination, and of the leaders of appropriate groups in the community as to other issues of public importance, must obviously

be considered and reflected, in order to insure that fairness is achieved with respect to programming dealing with such controversial issues (*Editorializing Report,* 1 Part three) Pike & Fischer, R. R. 201, 204-206; cf. *WBNX Bctg. Co., Inc.,* 4 Pike & Fischer, R. R. 242, 248)."

The Act itself requires the licensee to "afford reasonable opportunity for the discussion of conflicting views on issues of public importance." Communications Act, Section 314(a).

Each of the individual petitioners and many members of the United Church of Christ and its Tougaloo affiliates have been deprived of civil rights by the licensee in that each has been deprived of the right to appear on the station. We anticipate that the licensee will argue that it has the right to exercise judgment in the selection of program material and that no one has the right to appear on its station. This is no doubt true as a general proposition.

However, Tougaloo College and the United Church of Christ at Tougaloo had a right to reply to assertions that "conditions at the college are 'horrible' and that the place is teeming with communists" (988). It had a right not to be excluded from the regular "Our Colleges" program and not to have announcements of significant public events at Tougaloo College excluded by the licensee because Tougaloo is integrated and "controversial". It had a right to be free from libels by doctored newsreels and false statements against its Dean of Students, Reverend Edwin King, and its Professor, John Salter (1020).

Similarly, the United Church of Christ at Tougaloo has, so long as the licensee continues to rotate appearances on its Mid-day Devotional Program among the ministers of white churches, the right not to be excluded because it is integrated.

WLBT's Program Director has offered the following explanation for its treatment of Tougaloo College:

> "... the school, its faculty and student body have been actively identified with ... demonstrations, marches and other militant activities of a highly controversial nature which have been accompanied by violence, riots and other local disorders ... WLBT has made it clear to the Commission that it has endeavored to avoid stimulation in the Jackson area of further controversy regarding the racial crisis which in many northern cities has been inflamed to the point of violent riots accompanied with massive destruction of property, looting and physical attacks on individuals ... At the present time, virtually any activity by Tougaloo conceivably could be considered to be of a controversial nature." (1188)

As we have seen (*supra,* p. 9), the existence of a controversy did not deter WLBT from editorializing on the integration of Mississippi State University.

The individual appellants as candidates for public office and as principal spokesmen of the civil rights movement in the State of Mississippi are entitled to time to advocate their candidacy and civil rights views in the same way as white candidates and advocates of segregation.

Even if these particular appellants were not entitled to appear on WLBT, that fact would not bar them from contesting exclusionary practices based on race which prevent them from even being considered. *Frasier* v. *Board of Trustees,* 134 F. Supp. 589 (M.D.N.C. 1955), aff'd per curiam, 350 U. S. 979 (1956).

Furthermore, the individual petitioners and the members of the United Church of Christ as television viewers are entitled to expect that the licensee will not insult them by offensive references to their race, by biased and incomplete

reporting of the causes and issues which concern them and by the almost total exclusion of the fellow members of their race and the organizations and institutions which serve them from participation in local programming.

All of these rights are protected by the Constitution, by the Communications Act, and by the regulations and interpretations of the Federal Communication Commission, and all of these rights have been repeatedly and deliberately violated by the licensee.

Petitioners, as Television Viewers, Suffer Substantial Economic Injury From the Licensee's Conduct

It may be contended that a television viewer has a less direct relationship with a television station than, say, a bus rider has with a bus company, because the television viewer does not pay the station for its signal. From this it may be argued that the viewer's interest in television service is inferior in legal quality to the rider's interest in bus service. But any such view ignores economic realities. The dollar investment of television viewers in the purchase and maintenance of their sets is on the order of ten times the investment of the television industry. (House Rep. No. 281, 88th Cong., 1st Sess., pp. 57-58.) Since Negroes comprise almost half the television viewers in the WLBT service area, it is a safe assumption that the Negro investment in television equipment in the area is several times the investment of WLBT and that a substantial part of the value of the license derives from this Negro investment.

The Commission itself has recognized that the investment in equipment gives the public a "direct interest" in broadcast service, stating:

> "The direct interest of the public in the 'manner in which [broadcasting] is conducted' does not stem entirely from its ownership of the spectrum and the essentiality of broadcast service to community welfare. The public, in its purchase and maintenance of the

equipment necessary to the creation and availability of living room 'theatres' without which broadcasters cannot operate, has a vast direct financial stake in television . . .

"Network managers and station proprietors admit of a direct responsibility to the public for television service. Such responsibility will be better discharged if the public in various communities throughout our country become more vocal in their criticism of 'inept or shoddy' and in their praise of 'stimulating' and 'inspiring' efforts by their broadcasters." (House Report No. 281, 88th Congress, 1st Sess. pp. 40-41.)

By barring from the air programming of interest to the large segregated Negro group in its service area, the licensee is impairing the value of their investment and causing them substantial economic injury.

The Commission cannot practically or legally assume control of WLBT's programming. See "Network Programming Inquiry—Report and Statement of Policy" (FCC 60-970) F. R. Aug. 3, 1960 at pages 7291, et seq. Therefore, the only redress available to appellants must be in license proceedings.

The words of this Court in the *Philco* case are pertinent:

"We think the actual use of the facilities in this manner by NBC has created a situation that gives rise to standing in Philco to file its protest and, if the protest is found legally sufficient, to advance the alleged antitrust and other practices for consideration by the Commission in passing upon the renewal applications." (257 F. 2d at 658)

Whether the Commission can renew the license under these conditions is certainly questionable, although that is not the issue now before the Court. Certainly, it cannot determine that petitioners were not "parties in interest" and that they were not "affected" by its action.

POINT III

The Commission erred in failing to designate the application for hearing.

A renewal application must meet the same standards of "public convenience, interest or necessity" which are specified in connection with the original grant of a license (47 U.S.C. § 307 (a) and (d), *supra*, p. 13).

If an applicant for a license had described the sort of discriminatory programming policy which has been shown by the petition here, the Commission would certainly have set the matter for full hearing before issuing a license. The existence of serious unresolved issues concerning the station's past compliance with standards of public interest, equally requires a hearing, before the Commission decides to grant a renewal license.

Material and Substantial Issues Were Raised

There can be no question that the Petition raised substantial and material questions of fact.

The Commission itself expressly found:

(i) The Petition raises "substantial questions" (par. 25 (iii)—1287).

(ii) "Clearly, serious questions are raised" (par. 15—1280).

(iii) ". . . *substantial questions were raised as to whether the licensee's operation can be said to have conformed fully to the public interest standard of the Communications Act of 1934*" (par. 22—1286—emphasis ours).

(iv) ". . . serious issues are presented whether the licensee's operations have fully met the public interest standard" (par. 24—1288).

(v) ". . . serious public interest questions are raised," (par. 3—1275).

(vi) ". . . *substantial public interest questions have been raised by the petition filed by most responsible community leaders*" (par. 25—1288—emphasis ours).

Nor can there be any question that the issues raised were directly material to the questions confronting the Commission on the renewal of the license. The programming of a licensee during past license periods is the best possible evidence of the programming which it is likely to furnish under a new license. Repeated misconduct is, as the *Philco* case indicates, proof of the character of the licensee's management. Good character is an important qualification for a license.

There can be no question that the allegations of the Petition were supported with sufficient particularity. The original Petition not only alleged specifically that there was inequality in religious programming, public service announcements and other matters as between the white and Negro communities, but that there was unfairness in the treatment of public issues. The Petition was supported by a one-week monitoring study, which study proved the allegations, and in fact the Commission itself found that:

"The licensee did not respond specifically to the above allegations, * * *" (Paragraph 14, Note 8).

The scientific basis of petitioners' week-long monitoring study was described in an affidavit of Professor Smythe (874-76; and Attachment B, Exh. 2 to Reply, 946-52). The Commission expressly approved a similar study submitted by appellants in a companion case involving television station WJTV, saying:

"4. Many of the petitioners' specific allegations are based upon a monitoring study of the station from

March 1 through 7, 1964. The applicant has objected to the petitioners' use of this study on the grounds that petitioners did not utilize a 'composite' week, as utilized by the Commission in the programming sections of the renewal forms, and that petitioners did not follow the Commission's program classifications. However, petitioners argue that the week selected was representative and that its program classifications permitted a more meaningful analysis for the purposes of their petition. The applicant has not demonstrated that petitioners' study is deficient in either respect, and the study will therefore be considered." (*Applications of Capitol Broadcasting Company,* BRCT 378, p. 3, n. 4, released May 20, 1965).

As this Court has stated:

"... What is required is merely an articulated statement of some fact or situation which would tend to show, if established at a hearing, that the grant of the license contravened public interest, convenience and necessity, or that the licensee was technically or financially unqualified, contrary to the Commission's initial finding." *Federal Broadcasting System* v. *Federal Communications Comm.,* 225 F. 2d 560, 563 (1955).

See also *Philco Corporation* v. *Federal Communications Comm.,* 110 App. Div. D. C. 387, 293 F. 2d 864 at 867 (1961).

Clearly, if there were any question as to the sufficiency of the original Petition, that question was eliminated by the detailed evidentiary material in the Reply, which may be considered part of the original pleading in determining whether the requirement of pleading with particularity has been met, *Federal Broadcasting System* v. *F.C.C.,* cited above.

A Hearing Is Mandatory When Material Issues Exist

The Communications Act permits the Commission to grant renewal of a station's license without hearing only if it finds that "there are no substantial and material questions of fact" and that a grant of the application will serve the public interest, convenience and necessity (Section 309(d)(2)). In that case, it is required to "issue a concise statement of the reasons for denying the petition, which statement shall dispose of all substantial issues raised by the petition" (*ibid.*).

If a substantial and material question of fact is presented or if the Commission cannot find that the public interest, convenience and necessity will be served by the grant,

> "it shall formally designate the application for hearing on the ground or reasons then obtaining . . . Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate. The burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission." Section 309(e).

It is quite clear from the use of the mandatory words, "shall formally designate the application for hearing" and from the direction of "a full hearing" that Congress attached great importance to the requirement of a public hearing on contested grants of licenses.

This importance is confirmed by the legislative history. The present language of the Act derives from a recommendation of the Special Sub-Committee on Legislative Oversight that public hearings be required in all cases.

The original bill for the 1960 amendments so provided. The bill was later modified to permit licenses to be granted without a hearing only on the representation of Acting Chairman Ford of the F.C.C. that in many cases there are no competing applications and no opposition and that the requirement of a hearing in such cases would be burdensome. The history is summarized by the House Committee as follows:

"Local Hearings

"A staff study prepared for the Special Subcommittee on Legislative Oversight in the 85th Congress stressed the importance of hearings by the FCC in all cases involving television station grants and transfers.[1] * * *

"Section 1 of H. R. 11341 provided for mandatory local hearings. In testifying on this provision before the Subcommittee on Communications and Power Chairman Ford stated that in many cases there are no competing applications and there is no opposition to the grant; and that the requirement of a hearing (and especially a local hearing) in every case would greatly increase the workload of the Commission. He agreed, however, that the Commission should consider community needs as to programming; that there would be situations where the Commission would find it necessary to conduct hearings; and that where such hearings are necessary it may well be that the information sought can more effectively be obtained by holding the hearing in the area to be served by

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[1] Robert S. McMahon, "Regulation of Broadcasting—Half a Century of Government Regulation of Broadcasting and the Need for Further Legislation, a Study for the Committee on Interstate and Foreign Commerce, House of Representatives," 85th Cong., p. 165 (1958).

the station.[1]'" (H. Rept. 1800, 86th Cong., 2nd Sess., reprinted 1960 U. S. Code Cong. & Adm. News, p. 3522).

In describing the amendments, the Committee stated:

> "Subsection (d)(2) further provides that if a substantial and material question of fact is presented or if the Commission for any other reason is unable to find that a grant of the application would be consistent with subsection (a), it shall proceed as provided in subsection (e). The purpose of this language is to make it absolutely clear that the application will be designated for hearing before a grant in any case where a substantial material question of fact is presented and not disposed of. For the purposes of sections 309(d) and (e) a 'material question of fact' is a question of fact which is material to determination of the question whether the public interest, convenience, or necessity would be served by the granting of the application with respect to which such question is raised." (2 U. S. Code Cong. & Adm. News, 86th Congress—2nd Sess. 1960, p. 3520).

The courts have also emphasized the importance of a hearing. As the Supreme Court has stated:

> ". . . We agree that a 'full hearing' under § 309 means that every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Cf. 5 U.S.C. § 1006 (c). Such a hearing is essential for wise and just

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[1] Hearings before Subcommittee on Communications and Power, Committee on Interstate and Foreign Commerce, House of Representatives, 86th Cong., pp. 29, 70 (1960).

application of the authority of administrative boards and agencies." *United States* v. *Storer Broadcasting Co.*, 351 U. S. 192, 202.

This Court considered in the *Philco* case, 293 F. 2nd 864, that evidence of anti-trust violations by a licensee had a bearing on the character of its management and that even though the Commission considered itself thoroughly familiar with the allegations, it was required to hold a hearing. And in *Hudson Valley Broadcast Corporation* v. *FCC*, 116 App. D. C. 1, 320 F. 2d 723 (1963), this Court considered the effect of the 1960 amendments to Section 309, stating:

> "This section is intended 'to afford the Commission an opportunity to dispose of those petitions which [are] of no real consequence'." (320 F. 2d at 727)

In that case, as the Court noted, the parties made widely divergent factual allegations, but the Commission made no findings. Its opinion stated that there were no material issues of fact. In its brief before this Court, the Commission argued that the facts militating against the grant were "not important". This Court thought that the facts were important and accordingly remanded the case to the Commission for a hearing.

Intervener may point out steps which it has taken to remedy the complaints made in the Petition, but changes made after joinder of issue do not eliminate the necessity for a hearing on the issues; and the nature and sufficiency of the alleged changes raise additional issues, which should be considered by the Commission and not by this Court in the first instance.

The Dissenting Statement of Chairman Henry and Commissioner Cox points out the factual and statutory necessity for a hearing, before issuing a renewal license to a licensee who has followed a course of illegal conduct over a period

of years. The Memorandum Opinion of the majority of the Commission is not supported by any justification for dispensing with a hearing, where there are material issues of fact concerning the licensee's compliance with the requirements of public interest.

POINT IV

The Commission's opinion does not dispose of all substantial issues.

Section 309(d)(2) of the Communications Act requires that the Commission in denying a petition "issue a concise statement of the reasons for denying the petition, which statement shall dispose of all substantial issues raised by the petition." This language was included in the Act in order to assure that there be a sufficient explanation of the Commission's reasons to permit review by this Court. (H. Rept. 1800, 86th Cong., 2nd Sess., reprinted 1960 U. S. Code Cong. & Adm. News, p. 3520). Even apart from the statutory requirement, this Court has held that the Commission must give an adequate explanation of its reasons for concluding that a grant of license is in the public interest. *Interstate Broadcasting Company* v. *Federal Communications Comm.*, 116 App. D. C. 327, 323 F. 2d 797, 801 (1963).

The petition pointed out that the licensee had exceeded proper limits of time in connection with commercial broadcasts. Paragraph 6 stated:

> "Moreover, it has provided a disproportionate amount of commercials and entertainment, with very little attention to public affairs, education or information" (Petn., p. 2, par. 6).

More specifically, the petition asserted that less than ten percent of the total broadcast time on weekdays was used for public affairs, information, religion, education or public

service announcements, and more than fifteen percent for commercials (Petn., p. 3, pars. 9 and 10).

These assertions were backed up by an analysis of programming for the week of monitoring, which showed the number of minutes and the percent of programming devoted to each category, and showed the following percentages of time used for commercials (Exhibit A; Petn., pp. 1-3):

Monday	March 2nd	16.34%
Tuesday	March 3rd	17.55%
Wednesday	March 4th	18.72%
Thursday	March 5th	19.11%
Friday	March 6th	19.51%

The letter of Elizabeth Ewing (Attachment B, Exh. I-d to the Appellants' Reply), called attention to the fact that intervener, in its 1961 renewal application, had stated that maximum commercial time in a fourteen and a half minute program would be three minutes (921), and that this maximum had been exceeded thirty-two times during the week covered by the monitoring survey (935-45). In one thirty-minute period there were twenty commercials, aggregating more than eight minutes, or well in excess of twenty-five percent of the time (938).

The Memorandum Opinion and Order did not deal with this matter. If appellants had standing, as we have argued in Point I, they had a right to have the Commission pass on this issue.

The Commission's opinion makes numerous findings of improper conduct by the licensee and repeatedly states that the licensee has not adequately justified its conduct. The opinion repeatedly finds that there are unresolved issues raised by the Petition.

There is no suggestion in the findings of fact that the licensee's conduct has been satisfactory. Even more important, there is no suggestion that the licensee has even acted in good faith. There is no finding of fact that this

licensee has demonstrated good character or reliability. There is not even a finding that the licensee made a significant effort to improve its performance during the nine years of complaints and inquiries or even during the extended period in which this matter was under consideration by the Commission. The Commission's final "Evaluation" does not constitute either adequate findings of fact on the fundamental issues of character involved in this proceeding or an adequate explanation of the reasons for the Commission's action:

"E. *Evaluation*

"24. The discussion in B and C, above, establishes that serious issues are presented whether the licensee's operations have fully met the public interest standard. Indeed, it is a close question whether to designate for hearing these applications for renewal of license. In making its judgment, the Commission has taken into account that this particular area is entering a critical period in race relations, and that the broadcast stations, such as here involved, can make a most worthwhile contribution to the resolution of problems arising in this respect. That contribution is needed now—and should not be put off for the future. We believe that the licensee, operating in strict accordance with the representations made and other conditions specified herein, can make that needed contribution, and thus that its renewal would be in the public interest." (1288)

The foregoing statement of the Commission is ambiguous, at best. We hesitate even to speculate as to its meaning before receiving the Commission's brief.

We anticipate, however, that it may be argued that the record of this licensee is justified by community pressures, threats of retaliation, economic risks involved in fair programming, and similar considerations. We do not believe that excuses of this kind can ever justify a failure to meet the public interest standard of the Act. Even if such considerations could affect the weight of disciplinary action

to be taken by the Commission, we think it clear that the licensee must prove to the satisfaction of the Commission that it has done its best to deal with any conditions in its service area which prevented it from more adequately performing its public obligations. If it can be shown that the licensee by its own conduct has aggravated the tensions and hostilities which it relies upon to excuse its behavior, then it has no excuse at all.

The Commission could not without a full adversary hearing make the searching investigation of the licensee's conduct and character which the information already before the Commission requires. The lack of specific findings as to the character and good faith of the licensee and its management reflect the fact that the Commission has not made the investigation which should be made and which can be made only by the full hearing required under the Act.

CONCLUSION

This Court should determine affirmatively that appellants were parties in interest, entitled to standing as interveners before the Commission, and are parties aggrieved, entitled to appeal. It should order that a hearing be held by the Commission, both on the issue of racial discrimination raised by the Petition and on the issue of excessive commericals.

The Commission order should be reversed and the matter remanded for further proceedings.

Dated: August 24, 1965.

Respectfully submitted,

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